Assembly
California Legislature

ASSEMBLY COMMITTEE ON
PUBLIC SAFETY
REGINALD BYRON JONES-SAWYER, SR., CHAIR
ASSEMBLYMEMBER, FIFTY-NINTH DISTRICT

AGENDA

9:00 a.m. – April 3, 2018
State Capitol, Room 126

Item	Bill No. & Author	Counsel/ Consultant	Summary
1.	AB 1911 (Lackey)	Ms. Uribe	Child abuse reporting: cross-reporting among local agencies.
2.	AB 1931 (Fong)	Mr. Pagan	Firearms: licenses to carry concealed firearms.
3.	AB 1939 (Steinorth)	Ms. Uribe	Crime victims: compensation: relocation costs: pets.
4.	AB 1968 (Low)	Mr. Billingsley	Mental health: firearms.
5.	AB 2010 (Chau)	Mr. Billingsley	Juvenile facilities: chemical agents.
6.	AB 2013 (Cunningham)	Mr. Billingsley	Criminal gangs: reports: victim and witness identity.
7.	AB 2014 (E. Garcia)	Mr. Pagan	PULLED BY AUTHOR.
8.	AB 2222 (Quirk)	Mr. Rasool	Crime victims: prevention and investigation: informational databases.
9.	AB 2226 (Patterson)	Ms. Uribe	Crime victims: restitution and compensation.
10.	AB 2290 (Gallagher)	Ms. Uribe	Restraining orders: minor witness: visitation.

11.	AB 2356 (Kiley)	Mr. Fleming	Violent crimes.
12.	AB 2405 (Patterson)	Mr. Billingsley	Controlled substances: carfentanil.
13.	AB 2412 (Arambula)	Mr. Rasool	Police services: capital improvements.
14.	AB 2438 (Ting)	Ms. Burnley	Automatic withdrawal of plea.
15.	AB 2467 (Patterson)	Mr. Billingsley	Controlled substances: fentanyl.
16.	AB 2495 (Mayes)	Mr. Fleming	Prosecuting attorneys: charging defendants for the prosecution costs of criminal violations of local ordinances.
17.	AB 2513 (Jones-Sawyer)	Ms. Burnley	Controlled substances: narcotics registry.
18.	AB 2526 (Rubio)	Mr. Fleming	Temporary emergency gun violence restraining orders.
19.	AB 2532 (Jones-Sawyer)	Mr. Rasool	Infractions: community service.
20.	AB 2595 (Obernolte)	Ms. Burnley	Wards: confinement.
21.	AB 2669 (Jones-Sawyer)	Mr. Pagan	Peace officers: communications.
22.	AB 2701 (Rubio)	Mr. Rasool	Victims of violent crimes: trauma recovery centers.
23.	AB 2715 (Limón)	Mr. Fleming	Employers: prohibited disclosure of information: arrest or detention.
24.	AB 2724 (Eggman)	Ms. Burnley	PULLED BY AUTHOR.
25.	AB 2733 (Harper)	Mr. Pagan	Firearms: unsafe handguns: imprinting.

26.	AB 2801 (Salas)	Ms. Uribe	Crimes: memorials: veterans and law enforcement.
27.	AB 3112 (Grayson)	Mr. Billingsley	Controlled substances: butane.

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Date of Hearing: April 3, 2018
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1911 (Lackey) – As Amended April 2, 2018

SUMMARY: Requires every county to establish an on-line database to for specified agencies to track the reporting of allegations of child abuse and neglect by 2029. Specifically, **this bill**:

1) Makes legislative declarations about the importance of law enforcement, district attorney offices, and county welfare departments cross-reporting cases involving allegations of child abuse and neglect.

2) Requires every county to establish, on or before January 1, 2029, a secure on-line database for cross-reporting allegations of child abuse and neglect among agencies and individuals authorized to receive that information.

3) Requires that each online database be implemented with policies to oversee the sharing of information, including, but not limited to, cross-reporting among the county welfare department, the district attorney's office, and local law enforcement agencies, to ensure that each agency carries out its mandated investigative response to reports of child abuse or neglect.

4) Defines "cross-reporting" as "the transmission of information to the agencies given responsibility for the investigation of cases under Section 300 of the Welfare and Institutions Code and subject to the mandated reporter requirements of Section 11166."

5) States that this section does not relieve entities from the duty to submit substantiated reports of abuse and neglect to the Child Abuse Central Index (CACI) maintained by the Department of Justice (DOJ).

6) Names these provisions "Gabriel's Law."

EXISTING LAW:

1) Requires that any specified mandated reporter who has knowledge of or observes a child, in his or her professional capacity or within the scope of his or her employment whom the reporter knows, or reasonably suspects, has been the victim of child abuse, shall report it immediately to a specified child protection agency. (Pen. Code, § 11166, subd. (a).)

2) Requires specified local agencies to send the California Department of Justice (DOJ) reports of every case of child abuse or severe neglect that they investigate and determine to be substantiated. (Penal Code, § 11169, subd. (a).)

3) Directs the DOJ to maintain an index, referred to as the CACI, of all substantiated reports of child abuse and neglect submitted as specified. (Pen. Code § 11170, subds. (a)(1) and (a)(3).)

4) Allows DOJ to disclose information contained in the CACI to multiple identified parties for purposes of child abuse investigation, licensing, and employment applications for positions that have interaction with children. (Pen. Code, § 11170, subd. (b).)

5) Requires reporting agencies to provide written notification to a person reported to the CACI. (Pen. Code, § 11169, (c).)

6) Provide that, except in those cases where a court has determined that suspected child abuse or neglect has occurred or a case is currently pending before the court, any person listed in the CACI has the right to hearing which comports with due process before the agency that requested the person's CACI inclusion. (Pen. Code, §11169, subds. (d) and (e).)

7) Requires a reporting agency to notify the DOJ when a due process hearing results in a finding that a CACI listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

8) Requires the DOJ to remove a person's name from the CACI when it is notified that the due process hearing resulted in a finding that the listing was based on an unsubstantiated report. (Pen. Code, § 11169, subd. (h).)

9) Provides that any person listed in CACI who has reached age 100 is to be removed from CACI. (Pen. Code, §11169, subd. (f).)

10) Provides that any non-reoffending minor who is listed in CACI shall be removed after 10 years. (Pen. Code, § 11169, subd. (g).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Several agencies investigated allegations of abuse before Gabriel Fernandez's death without removing him from the home. Despite the many attempts to alert the appropriate authorities, Gabriel was left to suffer at the hands of his guardians because of what is largely being deemed as 'oversight.' Cases, such as Gabriel's, are, unfortunately, more prevalent in today's society than they ought to be, and it is time we take the necessary steps to address these inefficiencies in a meaningful way. This bill will open lines of communication among the appropriate agencies within each county and ensure our kids do not fall through the cracks."

2) **Impetus for this Bill**: According to the background provided by the author, this bill is the result of the tragic murder of eight-year-old Gabriel Fernandez by his mother and her boyfriend. On May 22, 2013, the Los Angeles Fire Department responded to a call in East Palmdale, reporting that Gabriel was not breathing. He was taken to the hospital with multiple injuries including a fractured skull, BB pellets in his lungs and groin, two missing teeth, broken ribs, and cigarette burns. Gabriel died from his injuries the following day.

Before his death, Gabriel's teacher had made several calls to the county after he came to school with bruising. A security guard had also made a call to 911 when he saw Gabriel with injuries, including what appeared to be cigarette burns. The 911 operator told him it was not an emergency. Several agencies had investigated allegations of abuse before Gabriel's death without removing him from the home. Law enforcement had also responded to the home and school several times but concluded there was no evidence of abuse.

Both Gabriel's mother and her boyfriend were charged with murder. A jury convicted the boyfriend of murder and also found true a special circumstance allegation of murder involving the infliction of torture. In the penalty phase of the trial the jury subsequently voted for the death penalty. (http://www.latimes.com/local/lanow/la-me-ln-gabriel-fernandez-murder-penalty-20171213-story.html.) Prosecutors also intend to seek the death penalty in the mother's case. (<https://www.dailynews.com/2017/12/01/uncle-of-gabriel-fernandez-8-says-family-is-haunted-by-boys-torture-death/>.)

Gabriel's death also led as well to criminal charges against several social workers, who left the boy in the home, based on a theory that their actions amounted to criminal negligence. In addition, the sheriff's deputies visited the home multiple times were later disciplined in connection with the death. (http://www.latimes.com/local/lanow/la-me-ln-gabriel-fernandez-murder-penalty-20171213-story.html.)

In response to Gabriel's horrific death, this bill would require every county in the state to establish an on-line database for cross-reporting allegations of child abuse and neglect between the county welfare department, the district attorney's office, and local law enforcement. The county databases are to be used as investigatory tools. However, it is not apparent how such a database would help in a case such as Gabriel's since both law enforcement and social workers determined that allegations of abuse were unfounded. Would the reporting entities be required to enter every potential call for abuse even in situations where they concluded there was no abuse?

3) **Problems with Local Databases**: Investigatory databases established for other purposes have been criticized for inaccuracy and lack of oversight.

For example, in August 2016, the California State Auditor released findings of the first ever investigation into the workings and impact of CalGang and the other shared gang databases that feed into it across the state. The audit revealed many concerns, including: the oversight structure is inadequate and does not ensure that user agencies collect and maintain criminal intelligence in a manner that preserves individuals' privacy rights; the governing entities act without statutory authority, transparency, or public input; there is little evidence that the governing entities have ensured user agencies to comply with federal regulations regarding databases; the investigators could not substantiate the validity of numerous CalGang entries; the gang databases were "tracking people who do not appear to justifiably belong in the system;" user agencies that responded to the auditor's statewide survey admitted that they use CalGang for employment or military-related screenings which is prohibited; user agencies have not ensured that CalGang records are added, removed, and shared in ways that maintain system accuracy and safeguard individuals' rights; the programming underlying CalGang did not purge all records within the required time frame. (https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf)

Additionally, as will be discussed below, the statewide database for reporting child abuse was previously fraught with problems and the subject of extensive litigation.

Creating 58 databases of allegations of child abuse without oversight, minimum standards, or procedural safeguards raises the same policy concerns.

4) **Child Abuse Central Index (CACI)**: The CACI was created in 1965 as a centralized system for collecting reports of suspected child abuse. This is not an index of persons who necessarily have been convicted of any crime; it is an index of persons against whom reports of child abuse or neglect have been made, investigated, and determined by the reporting agency (local welfare departments and law enforcement) to meet the requirements for inclusion, according to standards that have changed over the years.

Access to CACI initially was limited to official investigations of open child abuse cases, but in 1986 the Legislature expanded access to allow the Department of Social Services (DSS) to use the information for conducting background checks on applications for licenses, adoptions, and employment in child care and related services positions.

DOJ provides the following summary of CACI on its website:

"The Attorney General administers the Child Abuse Central Index (CACI), which was created by the Legislature in 1965 as a tool for state and local agencies to help protect the health and safety of California's children.

"Each year, child abuse investigations are reported to the CACI. These reports pertain to investigations of alleged physical abuse, sexual abuse, mental/emotional abuse, and/or severe neglect of a child. The reports are submitted by county welfare and probation departments.

"The information in the Index is available to aid law enforcement investigations, prosecutions, and to provide notification of new child abuse investigation reports involving the same suspects and/or victims. Information also is provided to designated social welfare agencies to help screen applicants for licensing or employment in child care facilities and foster homes, and to aid in background checks for other possible child placements, and adoptions. Dissemination of CACI information is restricted and controlled by the Penal Code.

"Information on file in the Child Abuse Central Index include:

- "Names and personal descriptors of the suspects and victims listed on reports;
- "Reporting agency that investigated the incident;
- "The name and/or number assigned to the case by the investigating agency;
- "Type(s) of abuse investigated; and
- "The findings of the investigation for the incident are substantiated.

"It is important to note that the effectiveness of the index is only as good as the quality of the information reported. Each reporting agency is required by law to forward to the DOJ a report of every child abuse incident it investigates, unless the incident is determined to be unfounded or general neglect. Each reporting agency is responsible for the accuracy, completeness and retention of the original reports. The CACI serves as a 'pointer' back to the

original submitting agency." (See <http://oag.ca.gov/childabuse>.)

DOJ is not authorized to remove suspect records from CACI unless requested by the original reporting agency. (https://oag.ca.gov/childabuse/selfinquiry.)

5) **Prior CACI Legislation and Litigation**: In 1963, the Legislature began requiring physicians to report suspected child abuse. [See Smith v. M.D. (2003) 105 Cal.App.4th 1169 (discussing evolution of child abuse detection laws).] Two years later, the Legislature expanded the reporting scheme to require that instances of suspected abuse and neglect be referred to a central registry maintained by DOJ. In the early 1980s, the Legislature revised the then-existing laws and enacted the Child Abuse and Neglect Reporting Act (CANRA), which created the current version of the CACI. These revisions did not require that listed individuals be notified of the listing, nor were individuals even able to determine whether they were listed in the CACI.

In *Burt v. County of Orange* (2004) 120 Cal.App.4th 273, the Court of Appeal held that a CACI listing implicates an individual's state constitutional right to familial and informational privacy, thus entitling the person to due process. (*Id.* at pp. 284-285.) Although the CACI does not explicitly grant a hearing for a listed individual to challenge placement on the CACI, the statutory scheme contained an implicit right to a hearing. (*Id.* at p. 285.) The court declined to provide guidance on what procedures that hearing should include. The court merely stated that the county social services agency was required to afford a listed individual a "reasonable" opportunity to be heard. (*Id.* at p. 286.)

In *Humphries v. Los Angeles County* (9th Cir. 2009) 554 F.3d 1170, 1200, the Ninth Circuit held that an erroneous listing of parents who were accused of child abuse on the CACI without notice and an opportunity to be heard would violate the parents' due process rights. Specifically,"[t]he lack of any meaningful, guaranteed procedural safeguards before the initial placement on CACI combined with the lack of any effective process for removal from CACI violates the [parents'] due process rights." (Id.) The court ruled that, "California must promptly notify a suspected child abuser that his name is on the CACI and provide 'some kind of hearing' by which he can challenge his inclusion." (*Id.* at 1201.)

In 2011, the Legislature amended the Child Abuse and Neglect Reporting Act to provide notice of inclusion and for a hearing to seek removal from the CACI. (See AB 717 (Ammiano), Chapter 468, Statutes of 2011.) The same legislation also limited the reports of abuse and neglect for inclusion in CACI to substantiated reports. Inconclusive and unfounded reports were removed.

Arguably, creating county databases without standards and procedural safeguards will subject counties to similar litigation.

6) **Argument in Support**: None submitted.

7) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "The creation of any government database containing sensitive personal information raises concerns regarding who will have access to the information, the uses to which the information will be put, and how the database will be kept secure from unauthorized access and use. Information regarding allegations of child abuse is of the highest sensitivity,

especially when, as here, the information includes unproven allegations. Yet AB 1911 fails to specify which agencies will have access to the information contained in the proposed fifty-eight county databases or how they are authorized to use the information, stating only that there will be information sharing 'including but not limited to' cross-reporting among the county welfare department, the district attorney's office and local law enforcement agencies. Nor does the bill require that implementation include safeguards against unauthorized access. Finally, to the extent the databases may be used for purposes beyond cross-reporting of information regarding ongoing investigations, there are no provisions regarding the rights of the individuals who will be listed on the databases to know what information is included regarding them or to challenge their inclusion.

"A similar lack of safeguards and due process protections led to terrible due process violations and abuses regarding California's statewide database of child abuse reports, the Child Abuse Central Index. Although some protections have been put in place as the result of litigation and legislative action, even with those changes there are still problems with the CACI system today. Under AB 1911, the same kinds of problems may be replicated in all fifty-eight counties with little or no legislative guidance or state oversight to prevent this from happening."

8) **Related Legislation**: AB 2005 (Santiago) would require a police or sheriff's department receiving a report of known or suspected child abuse or severe neglect to forward any such reports that are investigated and determined to be substantiated to the DOJ. AB 2005 will be heard in this committee today.

9) **Prior Legislation**:

   a) AB 1707 (Ammiano), Chapter 848, Statutes of 2012, removed non-reoffending minors from the CACI after 10 years, and amended the CACI notice provisions.

   b) AB 717 (Ammiano), Chapter 468, Statutes of 2011, amended the CACI provisions by including only substantiated reports and removing inconclusive and unfounded reports from CACI.

   c) SB 1312 (Peace), Chapter 91, Statutes of 2002, would have made numerous changes to CACI including the purging of old reports. The provisions dealing with CACI were deleted before SB 1312 was chaptered.

   d) AB 2442 (Keeley), Chapter 1064, Statutes of 2002, established the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and CACI.

   e) AB 1447 (Granlund), of the 1999-2000 Legislative Session, would have made numerous changes to CACI including the purging of old reports. AB 1477 was never heard by the Senate Judiciary Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

American Civil Liberties Union of California

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Chief Counsel: Gregory Pagan

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1931 (Fong) – As Introduced January 24, 2018

SUMMARY: Makes a license to a carry a concealed firearm (CCW) valid for a period not to exceed five years rather than the existing period of up to two, three, or four years depending on the occupation of the applicant.

EXISTING LAW:

1) Provides a county sheriff or municipal police chief may issue a CCW upon proof that:

   a) The person applying is of good moral character (Pen. Code, §§ 26150 & 26155, subd. (a)(1).);

   b) Good cause exists for the issuance (Pen. Code, §§ 26150 & 26155, subd. (a)(2).);

   c) The person applying meets the appropriate residency requirements (Pen. Code, §§ 26150 & 26155, subd. (a)(3).); and,

   d) The person has completed the appropriate training course (Pen. Code, §§ 26150 & 26155, subd. (a)(4).).

2) Provides that the license may either:

   a) Allow the person to carry a concealed firearm on his or her person (Pen. Code, §§ 26150 & 26155, subd. (b)(1).); or

   b) Allow the person to carry a loaded and exposed firearm in a county whose population is less than 200,000 persons according to the most recent federal decennial census. (Pen. Code, §§ 26150 & 26155, subd. (b)(2).)

3) States that for a new applicant for a CCW, the course of training for issuance of a CCW may be any course acceptable to the licensing authority and shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. (Pen. Code, § 26165, subd. (a).)

4) Provides that a CCW license is valid for up to two years, three years for judicial officers, or four years in the case of a reserve or auxiliary peace officer. (Pen. Code, § 26220.)

5) Provides that a license may include any reasonable restrictions or conditions that the issuing authority deems warranted, which shall be listed on the license. (Pen. Code § 26200, subds. (a) & (b).)

6) Provides that the fingerprints of each applicant are taken and submitted to the Department of Justice (DOJ). Provides criminal penalties for knowingly filing a false application for a concealed weapon license. (Pen. Code, §§ 26180 &26185.)

7) Specifies that applications for CCW licenses, applications for amendments to CCW licenses, amendments to CCW licenses, and CCW licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General. (Pen. Code, § 26175, subd (a)(1).)

8) Provides that the Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and as deemed appropriate, revise the standard application form for CCW licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary. (Pen. Code, § 26175, subd (a)(2).)

9) States that the application shall include a section summarizing the statutory provisions of state law that result in the automatic denial of a license. (Pen. Code, § 26175, subd (b).)

10) Provides that the standard application form for CCW licenses shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon. (Pen. Code, § 26175, subd (c).)

11) Specifies that applications for licenses shall be filed in writing and signed by the applicant. (Pen. Code, § 26175, subd (d).)

12) Provides that applications for amendments to CCW licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought and the reason for desiring the amendment. (Pen. Code, § 26175, subd (e).)

13) States that the forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application. (Pen. Code, § 26175, subd (f).)

14) Provides that an applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form, except to clarify or interpret information provided by the applicant on the standard application form. (Pen. Code, § 26175, subd (g).)

15) States that the standard application form is deemed to be a local form expressly exempt from the requirements of the Administrative Procedures Act. (Pen. Code, § 26175, subd (h).)

16) Provides that any CCW license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition,

contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated. (Pen. Code, § 26175, subd (i).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "California's concealed carry weapon, (CCW) laws grants abiding citizens the ability to apply for a license to carry firearms if the applicant can show good moral character, "good cause", meets residence requirements, and completes firearms training course. These permits are valid for two years and may be renewed. The short duration of the permit combined with a rigorous screening process creates an administrative burden for local officials and law enforcement entities that are already facing significant burdens. AB 1931 would extend the potential life of a CCW permit from two to up to five years, which will significantly reduce costs and administrative burdens while maintaining strong screening processes currently in place.

2) **Argument in Support**: According to the *California State Sheriff's Association,* "The Penal Code dictates the provision under which a CCW license may be issued to an individual by the issuing agency. The Sheriff of each County, or the Chief of Police of a jurisdiction, is the individual responsible for the issuance of a CCW permit. Under existing law, a CCW license allows qualified citizens who demonstrate both "good cause" and "good moral character" to carry loaded, concealed firearms into public places. In compliance with current law, all current licensees must go through extensive background check s and satisfy training and safety requirements.

   "In the past few years, requests for new CCW, have increased in many counties. The increase in new requests and renewals, combined with a rigorous screening process on the state and local level and the arbitrary two-year time line for how long a CCW is valid, creates an administrative burden in many agencies. The timing of this process can create a strain on limited resources and officers who need to make determinations regarding the new renewals based on the public good and safety".

3) **Argument in Opposition**: According to the *California Chapter of the Brady Campaign to Prevent Gun Violence,* "Existing law gives sheriffs and chiefs of municipal police departments the discretion to issue licenses for the carrying of concealed and loaded firearms. Law enforcement must find that good cause exists, that the applicant is of good moral character, is a resident or employed within the jurisdiction, and has completed a course of training. Under existing law, a concealed carry license is valid for any period of time not to exceed *two* years from the date of the license. This bill would instead, make a license for any period of time not to exceed *five* years from the date of the license.

   "The California Brady Campaign opposes extending the duration of a concealed carry license as the conditions under which the license was issued may have changed. For example, a person may no longer have good cause or a specific need for the license, or the person's "good moral character" or behavior may have declined. Carrying a loaded, hidden gun in public is a great responsibility that can put both the public and the gun carrying individuals at risk. Completing a course of training and review by the issuing authority at least every two years is in the interest of public safety."

REGISTERED SUPPORT / OPPOSITION:

Support

California Rifle and Pistol Association
California State Sheriffs' Association
Gun Owners of California
National Rifle Association of America
Riverside Sheriffs' Association

Opposition

American Academy of Pediatrics, California
Americans Against Gun Violence
California Chapters of the Brady campaign to Prevent Gun Violence
Giffords Law Center

Analysis Prepared by: Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1939 (Steinorth) – As Amended March 19, 2018

SUMMARY: Includes temporary housing for the victim's pets as part of relocation expenses which are reimbursable by the California Victim Compensation Board (board). Specifically, **this bill**: States that, for purposes of compensation by the board, "expenses incurred in relocating" may include the costs of temporary housing for pets of the victim upon immediate relocation.

EXISTING LAW:

1) Establishes the board to operate the California Victim Compensation Program (CalVCP). (Gov. Code, § 13950 et. seq.)

2) Provides than an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

3) Authorizes the board to reimburse for pecuniary loss for the following types of losses:

   a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

   b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services;

   c) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death,

   d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

   e) The expense of installing or increasing residential security, not to exceed $1,000;

   f) The expense of renovating or retrofitting a victim's residence or vehicle to make them accessible or operational, if it is medically necessary;

   g) Relocation expenses up to $2,000 if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and,

   h) Funeral or burial expenses. (Gov. Code, §§ 13957, subd. (a) & 13957.5, subd. (a).)

4) Limits the total award to or on behalf of each victim or derivative victim to $70,000. (Gov. Code, §§ 13957, subd. (b), & 13957.5, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 1939 will help survivors of domestic violence remove themselves from abusive situations while maintaining financial security and the safety of their pets. By expanding the authorized use of funds given to victims by the California Victim Compensation Board to also include temporary housing for pets of victims of domestic violence, survivors will have an easier pathway to escape abusive situations.

   "The California Victim Compensation Board uses the Restitution Fund to grant reimbursement up to $2,000 for economic loss. For victims of domestic violence, this reimbursement can be applied toward expenses incurred during relocation or removal from a violent environment. While domestic violence shelters work to accommodate survivors and their needs, many are unable to accommodate their pets. Providing an opportunity to temporarily house pets in a safe environment while a survivor enters a domestic violence shelter could be the ultimate difference for a victim.

   "AB 1939 seeks to expand the Victim Compensation authorized reimbursements to include expenses for temporarily housing pets at a participating animal shelter or facility while the victim enters a domestic violence shelter. Survivors should not feel that they must delay leaving a violent situation because they cannot afford to house their pets while entering a domestic violence shelter."

2) **CalVCP**: The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds. (See board Website <http://www.vcgcb.ca.gov/board>.)

3) **Gap Analysis Report**: In July 2015, the board issued the third in a series of reports which sought to determine the unmet needs of crime victims and barriers to services for crime victims. This final report outlined gaps in current services and compensation provided under CalVCP. (See *Gap Analysis Report: California's Underserved Crime Victims and their Access to Victim Services and Compensation*, July 2015, <http://vcgcb.ca.gov/victims/ovcgrant2013/deliverables/CalVCPGapAnalysis-OVCGrant2013.pdf>.) The report noted that the following unmet financial needs were among the more commonly identified by victims:

   - Victims who received funeral and burial compensation stated that the actual cost of the services exceeded the CalVCP reimbursement limit.

   - Victims stated that the amounts for relocation expenses were inadequate to cover the actual costs of relocation.

- Mental health providers stated that victims' lack of access to transportation creates difficulty accessing mental health treatment.
- Victims and advocates noted that lack of access to transportation was a barrier to obtaining other needed services.
- Childcare expenses are not currently reimbursed by CalVCP, further limiting some victims' access to medical or mental health services.
- Victims need to be reimbursed for lost wages for time taken from work to access services or attend crime-related appointments. (*Id.* at p. 7.)

This bill would provide that as part of relocation expenses, a victim may seek reimbursement for costs of temporary housing for a pet.

4) **Financial Condition of the CalVCP**: The Legislative Analyst's Office (LAO) has informed this committee that restitution fund revenue is depleting and that the fund is facing insolvency. Based on budget documents the LAO has provided this committee with the following figures regarding the financial status of the CalVCP[1]:

Restitution Fund (in thousands)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 (estimated)	FY 2018-19 (projected)
Adjusted Beginning Balance	$76,765	$85,759	$86,789	$68,530	$48,434
Revenues	$102,292	$96,433	$87,177	$70,704	$68,138
Expenditures	$93,301	$122,092	$105,439	$90,801	$90,823
Net Revenue	$8,991	($25,659)	($18,262)	($20,097)	($22,685)
Fund Balance	$85,756	$60,100	$68,527	$48,433	$25,749

While this bill does not increase the total amount a victim can be reimbursed by CalVCP ($70,000), it does provide for payment by the board for a new type of expense. Does it make sense to increase services while revenue is depleting and there are concerns about insolvency?

5) **Related Legislation**:

a) AB 2100 (Bonta), would extend the limitation on reimbursement for peer counseling services from10 weeks of counseling services to 26 weeks of counseling services and

[1] The figures are represented are in thousands. So, for example, the projected fund balance for FY 2018-2019 is $25,749,000.

establishes a reimbursement rate for the providers of these services. AB 2100 is pending in the Assembly Appropriations Committee.

b) AB 2226 (Patterson) would increase the allowable reimbursement by CalVCP for installing a residential security system $1,000 to $5,000. AB 2226 will be heard in this committee today.

c) SB 1005 (Atkins) would include a pet deposit and additional rent required if the victim has a pet in relocation expenses reimbursable by the board. SB 1005 will be heard in the Senate Public Safety Committee today.

d) SB 1232 (Bradford) would require an application for compensation under CalVCP to be filed within 3 years after the victim attains 21 years of age, instead of 18, except as specified. SB 1232 is pending in the Senate Public Safety Committee.

6) **Prior Legislation**:

a) AB 1061 (Gloria) would have expanded eligibility for compensation under the CalVCP and increases compensation limits for specified losses which are already reimbursed, including increasing limits for reimbursement of installing or increasing residential security from $1,000 to $2,000. AB 1061 was held in the Assembly Appropriations Committee.

b) AB 2160 (Bonta), of the 2015-2016 Legislative Session, was substantially similar AB 1061 (Gloria). AB 2160 was held in the Assembly Appropriations Committee.

c) AB 1140 (Bonta), Chapter 569, statutes of 2015, revised standards for involvement in a crime and for cooperation with the board in various circumstances; authorized compensation for non-consensual distribution of sexual images of minors, and revised various other rules governing the CalVCP.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 1968 (Low) – As Amended February 28, 2018
As Proposed to be Amended in Committee

SUMMARY: Requires that a person who has been taken into custody, assessed, and admitted to a designated facility because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period be prohibited from owning a firearm for the remainder of his or her life, subject to the right to challenge the prohibition at periodic hearings. Specifically, this bill:

1) Specifies that a person who has been taken into custody, assessed, and admitted because he or she is a danger to himself, herself, or others, as a result of a mental health disorder more than once within a one-year period shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.

2) Allows a person admitted more than once within a one-year period because they were a danger to themselves or others, to request a court hearing on whether they would be likely to use firearms in a safe and lawful manner.

3) Requires the District Attorney to bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner, if a hearing has been requested.

4) Specifies that if court finds that the people have met their burden to show by a preponderance of the evidence that a person is subject to a lifetime firearm prohibition because that person had been admitted to mental health facility, as specified, more than once within the previous one year period, the court shall inform the person of their right to file a subsequent petition no sooner than five years from the date of the hearing.

5) States that a person subject to a lifetime ban is entitled to bring subsequent petitions under this section. A person cannot file a subsequent petition, and is not entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition.

6) Provides that a hearing on subsequent petitions will be conducted as described in this subdivision, with the exception that the burden of proof is on the petitioner to establish by a preponderance of the evidence that the petitioner can use firearms in a safe and lawful manner and subsequent petitions must be filed in the same court of jurisdiction as the initial petition regarding the lifetime prohibition.

7) Requires that the form to request a hearing on the right to possess firearms include an authorization for the release of the person's medical and mental health records, upon request,

to the appropriate court, solely for use in the hearing.

8) Prohibits the mental health facility from submitting the hearing petition form on behalf of the individual.

9) Extends the time for the court to set the hearing on restoration of right to possess firearms from within 30 days, to within 60 days of the filing of a petition.

10) Authorizes a continuance of the hearing for 30 days on the restoration of right to possess firearms, upon a showing of good cause by the district attorney, an extension from the current continuance of 14 days.

EXISTING LAW:

1) Prohibits firearm possession for an individual who has been adjudicated as a mental defective or who has been committed to a mental institution. (18 USC 922, subd. (g)(4).)

2) States that no person who has been found, not guilty by reason of insanity of any crime other than those specified, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, as specified. (Welf. and Inst. Code, 8103, subd (c)(1).)

3) Specifies that no person found by a court to be mentally incompetent to stand trial, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court. (Welf. and Inst. Code, 8103, subd (d)(1).)

4) States that no person who has been placed under conservatorship by a court, as specified, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control, any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. (Welf. and Inst. Code, 8103, subd (e)(1).)

5) Specifies that a person who has been taken into custody on a 72 hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. (Welf. and Inst. Code, 8103, subd (f)(1).)

6) States that a person taken into custody on a 72 hour hold may possess a firearm if the superior court has found that the people of the State of California have not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. and Inst. Code, 8103, subd (f).)

7) States that prior to, or concurrent with, the discharge, the facility shall inform a person that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. Where the person requests a hearing at the time of discharge, the facility shall forward the form to the superior court unless the person states that he or she will submit the form to the superior court.

8) Provides that a person subject to a 72 hour hold may make a single request for a hearing at any time during the five-year period. (Welf. and Inst. Code, 8103, subd (f)(4).)

9) Specifies that within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. (Welf. and Inst. Code, 8103, subd (f)(5).)

10) States that he court shall set the hearing within 30 days of receipt of the request for a hearing. (Welf. and Inst. Code, 8103, subd (f)(5).)

11) Provides that upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 14 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. (Welf. and Inst. Code, 8103, subd (f)(5).)

12) Specifies that the prosecution has the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. and Inst. Code, 8103, subd (f)(6).)

13) States that if the court finds that the people have not met their burden), the court shall order that the person shall not be subject to the five-year prohibition on the possession of firearms. (Welf. and Inst. Code, 8103, subd (f)(7).)

14) No person who has been certified for intensive treatment as specified shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years. (Welf. and Inst. Code, 8103, subd (g).)

15) Prior to, or concurrent with, the discharge of each person certified for intensive treatment the facility shall inform the person of their right to a hearing on right to possess firearms. (Welf. and Inst. Code, 8103, subd (g)(3).)

16) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment for up to three years in the county jail as, a realignment felony, or in a county jail for not more than one year, as a misdemeanor. (Welf. and Inst. Code, 8103, subd (i).)

17) States whenever a person, who has been detained or apprehended for examination of his or her mental condition or who is otherwise prohibited from possessing a firearm as specified, is found to own, have in his or her possession or under his or her control, any firearm

whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon. (Welf. and Inst. Code, § 8102, subd. (a).)

18) Requires that firearms dealers obtain certain identifying information from firearms purchasers and forward that information, via electronic transfer to the Department of Justice (DOJ) to perform a background check on the purchaser to determine whether he or she is prohibited from possessing a firearm. (Pen. Code, § 28160-28220.)

19) Specifies that the Attorney General maintains an online database known as the Armed Prohibited Persons File (APPS). The purpose of APPS is to cross-reference persons who have ownership or possession of a firearm on or after January 1, 1991, as indicated by a record in the Consolidated Firearms Information System, and who, subsequent to the date of that ownership or possession of a firearm, fall within a class of persons who are prohibited from owning or possessing a firearm. (Pen. Code, § 30000.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "People at risk of harming themselves or others should not have easy access to firearms. Research shows that suicide with a firearm is the most common and by far the most lethal suicide method. Just having a firearm in the home is a strong predictor for gun suicide. AB 1968 tightens our laws to keep firearms out of the hands of people who may be suicidal or violent. Restricting their access to firearms could save lives."

2) **The Lanterman-Petris-Short Act (LPS Act):** The LPS Act governs the involuntary treatment of the mentally ill in California. Enacted by the Legislature in 1967, the act includes among its goals ending the inappropriate and indefinite commitment of the mentally ill, providing prompt evaluation and treatment of persons with serious mental disorders, guaranteeing and protecting public safety, safeguarding the rights of the involuntarily committed through judicial review, and providing individualized treatment, supervision and placement services for the gravely disabled by means of a conservatorship program. (*Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008-1009.) (www.sdap.org/downloads/research/criminal/mh.doc)

   The LPS Act limits involuntary commitment to successive periods of increasingly longer duration, beginning with a 72-hour detention for evaluation and treatment (Welf. & Inst. Code, § 5150), which may be extended by certification for 14 days of intensive treatment (Welf. & Inst. Code, § 5250); that initial period may be extended for an additional 14 days if the person detained is suicidal. (Welf. & Inst. Code, § 5260.) In those counties that have elected to do so, the 14-day certification may be extended for an additional 30-day period for further intensive treatment. (Welf. & Inst. Code, § 5270.15.) Persons found to be imminently dangerous may be involuntarily committed for up to 180 days beyond the 14-day period. (Welf. & Inst. Code, § 5300.) After the initial 72-hour detention, the 14-day and 30-day commitments each require a certification hearing before an appointed hearing officer to determine probable cause for confinement unless the detainee has filed a petition for the writ of habeas corpus. (Welf. & Inst. Code, §§ 5256, 5256.1, 5262, 5270.15, 5275, 5276.) A

180-day commitment requires a superior court order. (Welf. & Inst. Code, § 5301.) (*Id.*)

The LPS Act also authorizes the appointment of a conservator for up to one year for a person determined to be gravely disabled as a result of a mental disorder and unable or unwilling to accept voluntary treatment. (Welf. & Inst. Code, § 5350.) The proposed conservatee is entitled to demand a jury trial on the issue of his or her grave disability, and has a right to counsel at trial, appointed if necessary. (Welf. & Inst. Code, §§ 5350, 5365.) (*Id.*)

3) **Existing Law on Welfare & Institutions (W&I) Code 5150 (72-hour hold) and Firearm Prohibition:** Current law states that a person who has been taken into custody on a 72-hour hold because that person is a danger to himself, herself, or to others, assessed as specified, and admitted to a designated facility because that person is a danger to himself, herself, or others, shall not own or possess any firearm for a period of five years after the person is released from the facility. (Welfare and Inst. Code, 8103, subd (f)(1).)

   The facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. Upon filing of the petition, the court is required to set the hearing within 30 days of receipt of the request for a hearing. (Welf. and Inst. Code, 8103, subd (f)(5).)

   Current law provides that a person subject to a 72-hour hold may make a single request for a hearing regarding their right to possess a firearm at any time during the five-year period. (Welf. and Inst. Code, § 8103, subd (f)(4).) Current law allows a person subject to a 72-hour hold to restore their right to possess a firearm if the superior court has found that the prosecution has not met their burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. (Welf. and Inst. Code, § 8103, subd (f).)

   This bill would mandate a lifetime firearm prohibition for individuals that have more than one W&I 5150s (72-hour hold) within a one year time period. An individual subject to a lifetime firearm prohibition because of the provisions in this bill would be entitled to a hearing. The prosecution would bear the burden to demonstrate that the individual showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. If a court upholds the lifetime firearm prohibition, the person would be entitled to subsequent petitions, but no sooner than five years from the date of the last petition. At any subsequent petition the person would bear the burden to establish that they were likely to use firearms in a safe and lawful manner. This bill would extend the time frame to set the hearing from 30 days to 60 days, and describes the time frame and limits for any continuances of the hearing.

4) **Constitutional Right to Possess Firearms:** In June of 2008, the United States Supreme Court, in *District of Columbia v. Heller* (2008), 554 U.S. 570, 128 S. Ct. 2783, held that the Second Amendment of the United States Constitution, U.S. Const. Amend. II, confers an individual right to keep and bear arms, and guarantees the individual right to possess and carry weapons in case of confrontation, rejecting prior case law that had treated this right as a collective right of the people, assertable only in connection with the maintenance of a militia.

However, the Supreme Court stated that its opinion should not be taken to cast doubt on long-standing prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. Subsequent to the *Heller* decision, the Fourth District Appellate Court upheld California's current law regarding a 5 year prohibition on firearm possession for a person subject to a 72 hour hold. In *People v. Jason K.* (4th Dist. 2010), 188 Cal. App. 4th 1545.), the court upheld a court order precluding a defendant from possessing firearms pursuant to California state law barring possession of firearms by a person detained for a mental disorder, as it applied to an individual who had been detained for 72-hour psychiatric evaluation and then discharged, rejecting the detainee's argument that the state law was unconstitutional insofar as it permitted him to be deprived of his right to bear arms based on a showing by a preponderance of the evidence that he would not be likely to use firearms in a safe and lawful manner. The court noted that, as the *Heller* case indicated, this right is subject to the state's traditional authority to regulate firearm use by individuals who have a mental illness. The court also noted that the *Heller* decision had further explicitly recognized the problem of handgun violence and confirmed that the constitution leaves a variety of tools for combating that problem. The court concluded that although the preponderance of the evidence standard required the individual to share equally in the risk of an erroneous adjudication, this risk sharing was justified under circumstances where an individual exhibited a mental disorder sufficient to warrant hospitalization because of facts showing the individual might endanger himself or others.

In reaching its holding the court took note of the temporary nature (five years) of the deprivation of gun rights. The court stated, "When the gravity of the potential consequences of allowing possession of guns by an individual with a history of a manifested mental disturbance is balanced against the temporary deprivation of access to these weapons, the balance weighs in favor of permitting proof by a preponderance of the evidence. (Id. at 1557.)

This bill would provide for a permanent ban on firearm possession for an individual that has been held twice, or more, under a 72 hour hold, within a one year period. A lifetime ban raises due process questions as to whether or not a restriction to one opportunity to have a hearing is appropriate given that mental condition/status is something that can change over time. As proposed to be amended in committee, this bill would allow an individual to bring subsequent petitions to restore their right to possess firearms, but no sooner than five years from the date of the last petition.

5) **Amendments Proposed to be Adopted in Committee:**

a) Allow a person subject to a lifetime prohibition on firearm possession because of the provisions to bring subsequent petitions under this section to challenge the lifetime prohibition;

b) Specify that a person cannot file a subsequent petition, and is not entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition;

c) State a hearing on subsequent petitions must be filed in the same court of jurisdiction as the initial petition regarding the lifetime prohibition and the burden of proof is on the petitioner to establish by a preponderance of the evidence that the petitioner can use firearms in a safe and lawful manner;

d) Strike the requirement that the individual must wait six months after discharge from the facility to file the petition; and,

e) Limit the authorization for release of information to mental health records.

6) **Argument in Support**: According to *California District Attorneys Association*, "Once the person files a petition, unlike in many states, California places the burden on the District Attorney to show that a person should not get their firearms back following a 5150 hold. As you know, there are several aspects of the current petition process that make it very challenging for a District Attorney to make an informed decision whether to challenge a person's restoration petition.

"An additional concern with the filing of these petitions is that various facilities are filing these forms directly to the court, on behalf of the person being discharged. A person who is truly interested in obtaining the relief should be the one who files it with the court. In some instances, since the person did not file the petition, they don't have information regarding the hearing date, time, etc.

"Once the petition is filed, the hearing must be set within 30 days. This presents a problem for the District Attorney, as our offices are required to show by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner. Often, the District Attorney receives the notification several days after the hearing is set by the court, which cuts into the time needed to do adequate research as to how and why the person was referred to the mental health facility. Since the 5150 hold is a civil process, it's possible that the first interaction the District Attorney would have with a person is when this petition is filed, and we are asked to respond. We then must process a subpoena duces tecum (SDT) for applicable medical and/or mental health/psychiatric records from the facility and obtain said records for the court from the treatment facility and any intermediate facilities involved in the ultimate referral to the treatment facility. Given the nature of the petition and the potential tragic consequences of acting without enough information, as well as the reality of resources for both the courts and District Attorney offices, we agree that the hearing should be set 60 days from receipt of the request.

"Even when we file a SDT, obtaining information from various entities as to whether or not they had any contact with the person related to the treatment is very challenging. Often, the person is seen by other agencies (i.e. crisis centers, Health and Social Services, another hospital, etc.) prior to being referred to a treatment facility. Many facilities ask if the person has signed a release of medical records, and some District Attorney offices have been told that Health Insurance Portability and Accountability (HIPAA) rules prevent these agencies from advising whether they have had any contact with the person prior to their referral to a treatment facility. Keep in mind, we are not asking for specific information regarding the incident, only if they had any W&I Code section 5150 contact with the person around a specific date. If they did, we could prepare an SDT for applicable records, as required.

"Since the individual is the one requesting the hearing, that alone should be their authorization for the release of requested medical and/or mental health/psychiatric records to the applicable agency for the sole purpose of the requested hearing.

"AB 1968 presents a comprehensive solution to these challenges and strikes an appropriate balance between individuals' constitutional gun rights and the District Attorney's need for appropriate access and time to gather information and make an informed decision whether to challenge a petition."

7) **Argument in Opposition**: According to *California Psychiatric Association (CPA),* "Psychiatrists regularly admit, treat and release patients in designated facilities because they are a danger to themselves, or to others, or gravely disabled. In fact there are over 100,000 such admissions in California each year. It is quite common for patients experiencing the early stages of an onset of a severe mental illness to require two or more hospitalizations within a very short time frame, certainly within a one year period. This bill seems to assume that two such episodes within the span of a year mean that the person will continue to be a danger to themselves or others over the course of their lifetime – an idea that is not supported by any clinical evidence.

"Further, the CPA is not aware of any problem with current law, which requires surrender of firearms for 5 years upon release from hospitalizations in circumstances as described above – a very substantial period during which they must demonstrate that they pose no further danger – and many do demonstrate this. This suggests that there is no need for AB 1968. Even if circumstances existed which would indicate that current law needed tweaking, a lifetime firearms ban is an extreme solution that seems to rest on false assumptions about the dangerousness of persons with mental disorders.

"In fact there is a cohort of patients with psychotic disorders who experience no more than two inpatient hospitalizations, frequently in rapid succession, and then are never hospitalized again – which means they are not threats to the community at large or to themselves – during the remainder of their lifetime. A lifetime weapons ban would be unfair to them. At the other extreme, there are serial inpatients who may experience as many as 60 or 70 hospitalizations in a lifetime. Each discharge from a hospitalization tolls another 5-year ban on weapons acquisition and possession which taken altogether result in a lifetime ban. This would be appropriate, rightfully protects the community, and is provided by current law."

8) **Related Legislation**:

a) AB 2888 (Ting), would authorize an employer, a coworker, or a mental health worker to file a petition for gun violence restraining order for a person that poses a significant danger by possessing a firearm. AB 2888 is awaiting hearing in the Assembly Public Safety Committee.

b) SB 1100 (Portantino), would limit purchases on long guns (rifles) to individuals who are 21 years of age, or older. SB 1100 is pending referral from the Senate Rules Committee.

c) AB 3129 (Rubio), would require a lifetime firearm prohibition upon conviction for specified misdemeanors, related to domestic violence. AB 3129 is awaiting hearing in

the Assembly Public Safety Committee.

9) **Prior Legislation**:

a) SB 755 (Wolk) of the 2013-2014 Legislative Session would have prohibited a person who has been ordered by a court to obtain assisted outpatient treatment from purchasing or possessing any firearm or other deadly weapon while subject to assisted outpatient treatment. SB 755 was vetoed by the Governor.

b) AB 1014 (Skinner), Chapter 872, Statutes of 2014, authorized a law enforcement officer or immediate family member of a person, to seek, and a court to issue, a gun violence restraining order, as specified, prohibiting a person from having in his/her custody or control, owning, purchasing, possessing, or receiving any firearms or ammunition, as specified.

c) AB 1131 (Skinner), Chapter 747, Statutes of 2013, increased the period of time that a person is prohibited from possessing a firearm based on a mental illness or mental disorder or a serious threat of violence communicated to a licensed psychotherapist.

d) AB 1084 (Melendez), of the 2013-2014 Legislative Session would have increased the penalties to 2, 3, or 4 years in the state prison when an individual possesses a gun, who has been prohibited from gun possession because the person has been held for specified mental health findings. AB 1084 failed passage in the Assembly Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association (Sponsor)
California Association of Psychiatric Technicians
California Federation of Teachers
California Psychological Association
California State Sheriffs' Association
Peace Officers Research Association

Opposition

American Civil Liberties Union of California
California Psychiatric Association
Disability Rights California

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amended Mock-up for 2017-2018 AB-1968 (Low (A))

Mock-up based on Version Number 99 - Introduced 1/31/18
Submitted by: David Billingsley, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) A person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control a firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

(2) The court shall notify the Department of Justice of the court order finding the individual to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice of any certificate issued as described in paragraph (1) as soon as possible, but not later than one court day after issuing the certificate.

(b) (1) A person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 18715, 18725, 18740, 18745, 18750, or 18755 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law,

shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

(2) The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than, one court day after issuing the order.

(c) (1) A person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

(2) The court shall notify the Department of Justice of the court order finding the person to be a person described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her sanity as soon as possible, but not later than one court day after making the finding.

(d) (1) A person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

(2) The court shall notify the Department of Justice of the court order finding the person to be mentally incompetent as described in paragraph (1) as soon as possible, but not later than one court day after issuing the order. The court shall also notify the Department of Justice when it finds that the person has recovered his or her competence as soon as possible, but not later than one court day after making the finding.

(e) (1) A person who has been placed under conservatorship by a court, pursuant to Section 5350 or the law of any other state or the United States, because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism, shall not purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control, any firearm or any other deadly weapon while under the conservatorship if, at the time the conservatorship was ordered or thereafter, the court that imposed the conservatorship found that possession of a firearm or any other deadly weapon by the person would present a danger to the safety of the person or to others. Upon placing a person under conservatorship, and prohibiting firearm or any other deadly weapon possession by the person, the court shall notify the person of this prohibition.

(2) The court shall notify the Department of Justice of the court order placing the person under conservatorship and prohibiting firearm or any other deadly weapon possession by the person as described in paragraph (1) as soon as possible, but not later than one court day after placing the person under conservatorship. The notice shall include the date the conservatorship was imposed and the date the conservatorship is to be terminated. If the conservatorship is subsequently terminated before the date listed in the notice to the Department of Justice or the court subsequently finds that possession of a firearm or any other deadly weapon by the person would no longer present a danger to the safety of the person or others, the court shall notify the Department of Justice as soon as possible, but not later than one court day after terminating the conservatorship.

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the Department of Justice, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. A person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) (A) A person who has been (i) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (ii) assessed within the meaning of Section 5151, and (iii) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years after the person is released from the facility.

(B) A person who has been taken into custody, assessed, and admitted as specified in subparagraph (A) more than once within period of one year ***preceding the most recent admittance,*** shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.

(C) A person described in this paragraph, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

(2) (A) (i) For each person subject to this subdivision, the facility shall, within 24 hours of the time of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

(ii) Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years, or life~~,~~ ***if the person was previously taken into custody, assessed, and admitted to custody for a 72 hour hold because the person was a danger to himself, herself, or others during the previous one year period.*** ~~as appropriate~~. Simultaneously, the facility shall inform the person that, ~~six months after discharge from the facility,~~ he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a form for a request for a hearing. The Department of Justice shall prescribe the form. The form shall include information regarding how the person was referred to the facility. The form shall include an authorization for the release of the person's ~~medical and~~ mental health records, upon request, to the appropriate ~~district attorney~~ ***court***, solely for use in the hearing conducted pursuant to paragraph (5). A request for the records may be made by mail to the custodian of records at the facility, and shall not require personal service. ~~The person subject to this subdivision shall be responsible for submitting the form to the superior court and a copy of the form to the district attorney's office.~~ The facility shall not submit the form or copy of the form on his or her behalf.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five-year period or period of the lifetime prohibition~~, but no sooner than six months after discharge from the facility~~. The request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) A person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 60 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county behavioral health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court.

That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition, as appropriate, in this section on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) If the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms.

(9) This subdivision does not prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(10) If the court finds that the people have met their burden to show by a preponderance of the evidence and the person is subject to a lifetime firearm prohibition because that the person had been admitted as specified in subparagraph (A), of paragraph (1), of this subdivision more than once within the previous one year period, the court shall inform the person of their right to file a subsequent petition no sooner than five years from the date of the hearing.

(11)***A person subject to a lifetime ban is entitled to bring subsequent petitions under this section. A person cannot file a subsequent petition, and is not entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition. A***

hearing on subsequent petitions will be conducted as described in this subdivision, with the exceptions that the burden of proof is on the petitioner to establish by a preponderance of the evidence that the petitioner can use firearms in a safe and lawful manner and subsequent petitions must be filed in the same court of jurisdiction as the initial petition regarding the lifetime prohibition.

(g) (1) (i) A person who has been certified for intensive treatment under Section 5250, 5260, or 5270.15 shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years.

(ii) Any person who meets the criteria contained in subdivision (e) or (f) who is released from intensive treatment shall nevertheless, if applicable, remain subject to the prohibition contained in subdivision (e) or (f).

(2) (A) For each person certified for intensive treatment under paragraph (1), the facility shall, within 24 hours of the certification, submit a report to the Department of Justice, on a form prescribed by the department, containing information regarding the person, including, but not limited to, the legal identity of the person and the legal grounds upon which the person was certified. A report submitted pursuant to this paragraph shall only be used for the purposes specified in paragraph (2) of subdivision (f).

(B) Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

(4) A person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date ***within 60 days of receipt of the petition*** and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than ~~14~~ ***30*** days after the district attorney was notified of the hearing date by the clerk of the court. ***If additional continuances are granted, the total length of time for continuances shall not exceed 60 days.*** The district attorney may notify the county behavioral health director of the petition, and the county behavioral health director shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court.

That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, any declaration, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(h) (1) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under subdivision (g) if the same persons previously have been reported under subdivision (f).

(2) Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for not more than one year.

(j) "Deadly weapon," as used in this section, has the meaning prescribed by Section 8100.

(k) Any notice or report required to be submitted to the Department of Justice pursuant to this section shall be submitted in an electronic format, in a manner prescribed by the Department of Justice.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Date of Hearing: April 3, 2018
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2010 (Chau) – As Introduced February1, 2018

SUMMARY: Prohibits an employee of a juvenile facility, as defined, from possessing and using any chemical agent, such as pepper spray, in a juvenile facility, with limited exceptions. Specifically, **this bill**:

1) States than an officer or employee of a juvenile facility may not have in his or her possession or use any chemical agent in a juvenile facility, except as specified.

2) Allows the use of pepper spray in a juvenile facility only in accordance with the following:

   a) Pepper spray may be used only as a last resort when necessary to suppress a riot and only when de-escalation techniques have been unsuccessful or are not reasonably possible;

   b) Officers and employees of a juvenile facility may not carry pepper spray on their persons;

   c) Use of pepper spray must be authorized by a juvenile facility administrator or designee; and

   d) All use of pepper spray shall be documented, including reasons for use, authorization for use, decontamination procedures, and follow up visits with medical professionals. Incidents of the use of pepper spray shall be regularly reviewed by the facility administrator, and each incident shall be debriefed by the facility administrator or designee with all parties involved.

3) Defines the following terms for purposes of this bill:

   a) "Juvenile facility" includes any of the following:

      i) A county juvenile hall;

      ii) A county juvenile camp or ranch;

      iii) A facility of the Department of Corrections and Rehabilitation, Division of Juvenile Justice;

      iv) A regional youth educational facility, as specified;

      v) A youth correctional center, as specified;

vi) A juvenile regional facility; or

vii) Any other local or state facility used for the confinement of minors or wards.

b) "Chemical agent" means a "chemical-based agent designed to debilitate or incapacitate a person, or to cause a temporary burning sensation and inflammation of mucous membranes and eyes leading to involuntary closure, including, but not limited to, tear gas, mace, oleoresin capsicum, or pepper spray."

EXISTING LAW:

1) States that minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public. (Welf. and Inst. Code, § 202, subd. (c).)

2) Specifies that minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. (Welf. and Inst. Code, § 202, subd. (c).)

3) States that when the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community. (Welf. and Inst. Code, § 202, subd. (c).)

4) Provides that the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment. (Welf. and Inst. Code, § 851.)

5) In order to provide appropriate facilities for the housing of wards of the juvenile court in the counties of their residence or in adjacent counties so that those wards may be kept under direct supervision of the court, and in order to more advantageously apply the salutary effect of a safe and supportive home and family environment upon them, and also in order to secure a better classification and segregation of those wards according to their capacities, interests, and responsiveness to control and responsibility, and to give better opportunity for reform and encouragement of self–discipline in those wards, juvenile ranches or camps may be established, as provided in this article. (Welf. and Inst. Code, § 880.)

6) States that the juvenile facility administrator, in cooperation with the responsible physician, shall develop and implement written policies and procedures for the use of force, which may include chemical agents. Force shall never be applied as punishment, discipline or treatment. (Code of Regulations, Title 15, § 1357.)

7) Specifies that at a minimum, each facility shall develop policy statements which: (Code of Regulations, Title 15, § 1357, subd. (a)(1)-(4).)

a) Define the term "force," and address the escalation and appropriate level of force, while emphasizing the need to avoid the use of force whenever possible and using only that

force necessary to ensure the safety of youth, staff and others;

b) Describe the requirements for staff to report the use of force, and to take affirmative action to stop the inappropriate use of force;

c) Define the role, notification, and follow-up procedures of medical and mental health staff concerning the use of force; and,

d) Define the training which shall be provided and required for the use of force, which shall include: known medical conditions that would contraindicate certain types of force; acceptable chemical agents; methods of application; signs or symptoms that should result in immediate referral to medical or mental health staff; requirements of the decontamination of chemical agents, if such agents are utilized; and appropriate response if the current use of force is ineffective.

8) Requires that policies and procedures be developed which include, but are not limited to, the types, levels and application of force, documentation of the use of force, a grievance procedure, a system for investigation of the use of force and administrative review, and discipline for the improper use of force. Such procedures shall address:

a) The specific use of physical, chemical agent, lethal, and non-lethal force that may, or may not, be used in the facility;

b) The limitations regarding use of force on pregnant youth; and,

c) A standardized format, time period, and procedure for reporting the use of force, including the reporting requirements of management and line staff.

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "The use of chemical spray on young people not only produces physical and mental health effects, but it also interferes with their rehabilitation, because it can have serious effects on the relationship between youth and staff. By limiting the use of chemical sprays in juvenile detention facilities, we are adopting accepted professional practices that will provide a safe and supportive environment for the rehabilitation of our youth."

2) **Pepper Spray**: Pepper spray, or oleoresin capsicum (OC) spray, is a type of chemical restraint that contains capsaicinoids extracted from the resin of hot peppers. According to a report published by the National Institute of Justice, pepper spray, "incapacitates subjects by inducing an almost immediate burning sensation of the skin and burning, tearing, and swelling of the eyes. When it is inhaled, the respiratory tract is inflamed, resulting in a swelling of the mucous membranes…and temporarily restricting breathing to short, shallow breaths. (http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf)

In *U.S. v. Neill* (1999), 166 F.3rd 943, the 9th Circuit Court of Appeal held that, "Pepper spray qualifies as a 'dangerous weapon' because it may cause 'serious injury,' namely

'extreme physical pain or the protracted impairment of a function of a bodily member, organ or mental faculty'...."

3) **Purpose of California's Juvenile Justice System:** The juvenile justice system in California is intended to promote rehabilitation and seeks to further the best interest of the minor.

"Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (Welf. and Inst. Code, § 202, subd. (c).)

California law also emphasizes the distinction between juvenile halls and adult penal facilities.

". . ., the juvenile hall shall not be in, or connected with, any jail or prison, and shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment." (Welf. and Inst. Code, § 851.)

4) **Use of Pepper Spray in Juvenile Facilities:** While pepper spray is widely accepted and used by law enforcement and adult corrections agencies across the country, its use is not common in juvenile correctional agencies. There is concern about the health hazards of pepper spray and concern about the negative impact on staff-youth relationships, the key to successful juvenile rehabilitative programming. Very few states authorize its use and in the states that allow its use in policy, most prohibit the use except as a last resort and with many conditions and few facilities put it into practice. Thirty-five states no longer allow pepper spray in juvenile detention halls. Only California, Illinois, Indiana, Minnesota, South Carolina and Texas allow employees to routinely carry canisters. The remaining states allow its use in some capacity, but employees do not routinely carry it. (http://sanfrancisco.cbslocal.com/2018/02/07/california-considers-barring-pepper-spray-youth-detention-facilities/)

The Council of Juvenile Corrective Administrators (Council) explored the use of pepper spray in juvenile facilities in an issue brief published in 2011. The Council concluded that overreliance on restraints, whether they are chemical, physical, mechanical or other, compromised relationships between staff and youths, one of the critical features of safe facilities. (http://cjca.net/attachments/article/172/CJCA.Issue.Brief.OCSpray.pdf) The issue brief examined the policies of State's regarding use of pepper spray in juvenile facilities and reviewed studies on the use of pepper spray. The Council noted that while few academic studies have focused specifically on pepper spray use in juvenile settings, recent research on other types of restraint use (physical and mechanical) in juvenile confinement settings shows that applying restraints disrupts correctional climates by creating anger and feelings of unfair use of authority, in addition to negatively impacting staff. One recent study found that restraints are often applied as punishment rather than in response to immediate threats of violence. Youth in juvenile facilities have described incidents of restraint as causing physical and emotional pain. Another study found that facilities with high numbers of restraint incidents are more likely to have higher rates of safety problems, including youth and staff

injury, suicidal behavior, youths injured by staff and fear among youths. (*Id.*)

5) **Potential Concerns About Prohibiting the Use of Chemical Restraints in Juvenile Facilities:** The following are potential concerns related to prohibiting the use of chemical restraints in juvenile facilities:

   a) Eliminating the use of pepper spray will increase reliance on physical force, as opposed to de-escalation techniques;

   b) De-escalation might not be effective in situations where pepper spray might provide control of the situation; and,

   c) Elimination of pepper spray might raise the chance that a situation could result in harm to a juvenile or a staff member, because physical force would be needed.

   Santa Cruz County provides a potential example that concerns about prohibition of chemical restraints in juvenile facilities can be successfully navigated. In Santa Cruz County, staff does not carry pepper spray in the juvenile facility. Staff in the Santa Cruz juvenile facility stress de-escalation as an alternative to chemical restraints. Jurisdictions that do not use pepper spray emphasize that the best safety tool is a positive relationship between youth and staff. A positive relationship between youth and staff can foster an atmosphere which makes it less likely for there to be conflicts within the juvenile facility. If there is a physical confrontation, youth are physically separated.

   If de-escalation is not emphasized or not effective, then it is likely that probation officers will rely on other uses of physical force or physical restraints. Other methods of force or restraint can be equally damaging to youth as pepper spray, and also damage the relationship between staff and youth. To meet the goals of this bill, juvenile facilities that are currently relying on chemical restraints would need to ensure that they don't simply switch to other forms of physical restraints.

   The California juvenile justice system is intended to provide a safe and supportive homelike environment. To the extent that other states have effectively maintained safe juvenile environments without the use of chemical restraints, such practices are consistent with the stated goals of the California juvenile justice system.

6) **Distinction Between County Juvenile and State Juvenile Facilities:** State juvenile facilities are part of the Division of Juvenile Justice (DJJ). DJJ only houses juveniles who have been charged and found responsible for more serious and violent crimes. To the extent that restricting/and or eliminating the use of chemical restraints is appropriate in county juvenile facilities, it is worth considering whether the differences in populations between county juvenile facilities and DJJ should result in any differences in policy on the use of chemical restraints.

7) **Argument in Support**: According to the *Youth Law Center* "The use of chemical agents should be restricted in juvenile detention facilities, as their use is physically and psychologically harmful to young people. The most commonly used chemical agent – oleoresin capsicum (OC) or pepper spray – poses significant health risks to everyone exposed to it. These risks may be exacerbated by medical contraindications, mental illness,

insufficient air circulation, and repeated exposure – all conditions that exist in juvenile facilities. A 2009 literature review indicated that the effects of pepper spray are exacerbated in confined areas and areas with poor ventilation, two characteristics of many juvenile facilities.

"Children with compromised respiratory systems, from common childhood conditions such as asthma or bronchitis, may be at particular risk for respiratory arrest resulting from OC spray exposure. The risks involved in using OC spray may also be exacerbated when a youth is under the influence of psychotropic drugs. Many young people incarcerated in juvenile facilities are prescribed psychotropic medication that can increase the risks of OC spray.

"Beyond the physical and mental health effects of chemical agents discussed above, the use of chemical spray can have serious effects on the relationship between youth and staff – a relationship that is crucial to rehabilitation. Young people thrive when they are in healthy, trusting, relationships with committed, caring adults. In the absence of these relationships, efforts at rehabilitation, and supportive programming suffer. As the Office of Juvenile Justice and Delinquency Prevention has observed, "youth distrust of facility staff and conflict with them can undermine program efforts to alter delinquent career paths and elevate discipline, control, and safety issues.

"The use of chemical agents impedes the development of a trusting relationship between staff and youth that is crucial for youth rehabilitation and overall facility safety. The Council of Juvenile Correctional Administrators (CJCA) has noted that over-reliance on chemical restraints can harm relationships between youth and staff and that the states authorizing the use of chemical restraints tend to have adopted a more punitive, adult-corrections-like approach to juvenile detention. A survey conducted by CJCA demonstrated that where OC spray is used, staff and youth fear for their safety more than average.

"Further, national best practices for juvenile detention counsel against the use of chemical agents. The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative's detention facility assessment standards, recognized as representing best practices for juvenile detention, prohibit the use of chemical agents. California can and should join the majority of states in placing strict limits on the use of chemical agents, and should take the steps outlined in AB 2010 to come more closely in line with national best practice on this issue."

8) **Argument in Opposition:** According to the *Del Norte County Probation Department*, "We recognize that pepper spray should be used in our facility only under limited circumstances, but AB 2010 would effectively ban its use altogether. If passed, your bill will endanger both the minors in our custody and our probation peace officers responsible for their care. The only tool officers will have left to protect juveniles and staff from violent attacks will be the use of significant physical force.

"Our juvenile facilities house juvenile offenders convicted of crimes such a as murder, rape, assault with a deadly weapon, carjacking, home invasion and terrorist threats, to name just a few of the serious and violent offenses committed by juvenile offenders. A high percentage of these offenders are gang members who bring to our juvenile institutions the same violent mentality they display on the streets. These juveniles have the knowledge and sophistication to create dangerous weapons to use against other juveniles or probation peace officers.

"Pepper spray allows our officers to respond to a violent attack rapidly because it can be dispersed from a distance and end altercations quickly. You should be aware that a 6 foot, 220 pound juvenile – not an uncommon size and weight of incarcerated minors – can inflict serious injury on another juvenile or a probation peace officer in a matter of seconds. By banning the use of pepper spray, these violent attack will last longer resulting in more serious injuries to their victims.

"Your bill will force officers to go 'hands on' in every encounter, thus increasing the risk of injury to both the juveniles and the officers involved. Undoubtedly, this increase in physical restraints will result in increased injuries to officers triggering higher workers' comp costs, missed work and increased overtime to cover the lost shifts."

9) **Related Legislation**: AB 2657 (Weber), would specify that an educational provider not use specified restraint on a pupil at risk for positional asphyxiation as a result of risk factors that are known to the provider, including exposure to pepper spray. AB 2657 is awaiting hearing in the Assembly Education Committee.

10) **Prior Legislation**: AB 1042 (Parra), of the 2003-2004 Legislative Session, would have required the Department of Mental Health (DMH) to issue pepper spray to medical technical assistants working in DMH facilities while on duty. AB 1042 was vetoed by the Governor.

REGISTERED SUPPORT / OPPOSITION:

Support

Children's Defense Fund (Sponsor)
Youth Law Center (Sponsor)
#cut50
American Civil Liberties Union of California
Arts for Incarcerated Youth Network
Asian Law Alliance
Bend the Arc Jewish Action
California Public Defenders Association
Center on Juvenile and Criminal Justice
Ceres Policy Research
Children's Law Center of California
Children Now
Coalition for Justice and Accountability
Consortium for Children
Disability Rights California
Ella Baker Center for Human Rights
Fathers & Families of San Joaquin
Juvenile Justice Commission County of Santa Clara
Legal Services for Children
National Center for Lesbian Rights
National Center for Youth Law
Pacific Juvenile Defender Center
Public Counsel
Resilience Orange County

Root and Rebound
Silicon Valley De-Bug
W. Haywood Burns Institute
Youth Forward

Opposition

Association of Orange County Deputy Sheriffs
Association of Probation Supervisors, SEIU 721 – BU 702
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California Narcotic Officers Association
California Statewide Law Enforcement Association
California State Association of Counties
California State Sheriffs' Association
Chief Probation Officers of California
Del Norte County Probation Department
Fraternal Order of Police N. California Probation, Lodge 19
Fraternal Order of Police, Silicon Valley Lodge 52
Fraternal Order of Police, California State Lodge
Kern County Probation Officers Association
Long Beach Police Officers Association
Los Angeles County Deputy Probation Officers' Union, AFSCME Local 685
Los Angeles County Professional Peace Officers' Association
Madera Probation Peace Officers' Association
Nevada County Juvenile Hall
Peace Officers Research Association of California
Probation and Corrections Peace Officer Association
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
Sacramento County Probation Association
San Diego County Probation Officers Association
San Francisco Deputy Probation Officers Association
San Joaquin Probation Officers Association
San Mateo County's Probation and Detention Association
Santa Clara County Probation Peace Officers Union, AFSCME Local 1587
State Coalition of Probation Organizations
Ventura County Professional Peace Officers' Association

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2013 (Cunningham) – As Introduced February 5, 2018
As Proposed to Be amended in Committee

SUMMARY: Prohibits law enforcement agencies, upon request, from disclosing the names of victims of, and witnesses to, specified gang related offenses, except under limited circumstances. Prohibits disclosure of the same information pursuant to the California Public Records Act (CPRA). Specifically, **this bill**:

1) Specifies that an employee of a law enforcement agency who personally receives a report involving specified gang related offenses, shall inform the victim and any witnesses, that their name will become a matter of public record unless they request that it not become a matter of public record.

2) Requires a written police report of involving specified gang offenses to indicate that the alleged victim and any witnesses have been properly informed about their right to request non-disclosure of their names and shall memorialize their responses.

3) States that a law enforcement agency shall not disclose, except to public safety officers as specified, or where authorized or required by law, the name of a person who alleges to be the victim of, or who is reported as a witness to, a specified gang related offense, when the victim or witness has requested the withholding of the victim's or witness's name.

4) Provides that the name of a victim of, or witness to, specified gang related offenses, may be withheld at the victim's or witness's request, or at the request of the victim's or witness's parent or guardian if the victim or witness is a minor, when a request for information is made pursuant to the CPRA, as specified.

EXISTING LAW:

1) Requires, under the California Public Records Act (CPRA), state and local agencies to make public records available for inspection by the public, unless another provision of the CPRA or another statute expressly exempts the records from the disclosure requirement. (Gov. Code, § 6250 et seq.)

2) Defines "public records" to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Gov. Code, § 6252, subd. (e).) The records of weapons permit holders maintained by the sheriff are public records. (62 Ops. Cal.Atty.Gen. 402.)

3) Requires an agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the PRA or that on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)

4) Exempts from disclosure under the CPRA any records relating to an investigation conducted by a state or local law enforcement agency or any investigatory or security files complied by any other state or local agency for correctional, law enforcement, or licensing purposes. Specifies, however, that state and local law enforcement agencies shall disclose the names and addresses of persons involved in the incident, including certain information about the victim, as specified, unless the disclosure would endanger the successful completion of the investigation. (Gov. Code, § 6254, subd. (f).)

5) Provides, notwithstanding any required disclosure above, that the name of a victim of certain sexual crimes, including a human trafficking, may be withheld from disclosure at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. (Gov. Code, § 6254, subd. (f)(2).)

6) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code. (Gov. Code, § 6254, subd. (f)(2).)

7) Requires state and local law enforcement agencies to disclose, subject to certain restrictions, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator, as defined. However, notwithstanding this general disclosure requirement, the address of the victim of certain sexual crimes, including human trafficking, shall remain confidential. (Gov. Code, § 6254, subd. (f)(3).)

8) Provides that an adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, who lives in California, may apply to the Secretary of State to have an address designated by the Secretary of State serve as the person's address or the address of the minor or incapacitated person for reasons of confidentiality. (Gov. Code, § 6206, subd. (a).)

9) Requires an employee of a law enforcement agency who personally received a report from a person alleging that he or she has been the victim of a sex offense, to inform the person making the report that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record. Provides that if the victim makes this request then the law enforcement agency shall not disclose the name of a victim, except as specified. (Penal Code Section 293 (a)-(d).)

10) Provides that any victim of a sexual crime who has not elected to exercise his or her right to keep her name confidential may request to be identified in all court records and proceedings as either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to the protect the privacy of the person and will not unduly prejudice the prosecution or the defense. (Penal Code Section 293.5.)

11) Requires the prosecuting attorney to disclose to the defendant or his or her attorney the names and addresses of persons the prosecutor intends to call as witnesses at trial, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies (Pen. Code, § 1054.1, subd. (a).)

12) Prohibits an attorney from disclosing to a defendant, members of the defendant's family, or anyone else, the address or telephone number of a victim or witness whose name is disclosed to the attorney pursuant to discovery of evidence in a criminal case, unless specifically permitted to do so by the court after a hearing and a showing of good cause. (Pen. Code, § 1054.2, subd. (a)(1).)

13) Allows an attorney to disclose the address or telephone number of a victim or witness to persons employed by the attorney or to persons appointed by the court to assist in the preparation of a defendant's case if that disclosure is required for that preparation. (Pen. Code, § 1054.2, subd. (a)(2).)

14) States that except as otherwise required by criminal discovery, or by the United States Constitution or the California Constitution, no law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense. (Pen. Code, § 841.5, subd. (a).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "With a statewide rise in gang-related crime, California must act to protect both victims and witnesses of gang crimes who want to cooperate with authorities, but fear retaliation. We should give victims of and witnesses to gang crimes the same protections that victims of sexual assault and domestic violence have."

2) **California Public Records Act:** The California Public Records Act (CPRA) requires every state and local agency to make its records available for public inspection upon request, subject to certain exemptions. The CPRA derives from Article I ("The Declaration of Rights") of the California Constitution and is rooted in the principle that the conduct of government should be subject to public scrutiny. The placement of the right of access to public records in Section 3 of Article I of the state constitution puts it on par with the people's fundamental rights of assembly and petition. Because of the obviously high value placed on access to public records, the California Constitution expressly requires that the right of access in the CPRA be broadly construed, and that any limitation on this access be "narrowly construed." (Article 1 Section 3(b)(2).) In addition, the state constitution requires that any limitation on access to public records be supported "with findings demonstrating the interest protected by the limitation and the need for protecting that interest." (*Id.*)

The fundamental precept of the CPRA is that governmental records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Most of the reasons for withholding disclosure of a record are set forth in specific exemptions contained in the CPRA. However, some confidentiality provisions are incorporated by reference to other laws. Also, the CPRA provides for a general balancing test by which an agency may withhold records from disclosure, if it can establish that the public interest in nondisclosure clearly outweighs the public interest in disclosure. (http://ag.ca.gov/publications/summary_public_records_act.pdf)

There are two recurring interests that justify most of the exemptions from disclosure. First, several CPRA exemptions are based on recognition of the individual's right to privacy (e.g., privacy in certain personnel, medical or similar records). Second, a number of disclosure exemptions are based on the government's need to perform its assigned functions in a reasonably efficient manner (e.g., maintaining confidentiality of investigative records, official information, records related to pending litigation, and preliminary notes or memoranda).

If a record contains exempt information, the agency generally must segregate or redact the exempt information and disclose the remainder of the record. If an agency improperly withholds records, a member of the public may enforce, in court, his or her right to inspect or copy the records and receive payment for court costs and attorney's fees. (Id.)

3) **Exemptions from the CPRA for Records Related to Investigations by Law Enforcement:** Records of complaints, preliminary inquiries to determine if a crime has been committed, and full-scale investigations, as well as closure memoranda are investigative records. Police reports involving gang related offenses are investigative records. Under the CPRA, investigative records are exempt from disclosure on the CPRA, at the discretion of the agency.

However, the CPRA also specifies that certain basic information must be disclosed by law enforcement agencies in connection with investigatory documents, unless to do so would endanger the safety of an individual or interfere with an investigation.

> . . ., state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, . . ., unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. (Gov. Code 6254, subd. (f).)

By directing disclosure to the information described above, the CPRA seeks to ensure that victims, their representatives, and other appropriate parties have access to information to

pursue insurance claims or bring civil litigation, where appropriate. However, law enforcement could prohibit the disclosure of victim or witness names (or any other information) under any circumstances where disclosure would endanger the safety of a victim or witness.

4) **Existing Confidentiality Provisions for Crime Victims**: Current law places limits on the public disclosure of the names of victims of certain crimes. The CPRA specifies that the name of a victim of enumerated crimes may be withheld from disclosure at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. (Gov. Code, § 6254, subd. (f)(2).) The crimes for which victims can currently request non-disclosure of their name are primarily sex-related offenses. Current law requires law enforcement to inform victims of their right to request that their name become a matter of public record, when the person is making a report alleging that they have been the victim of a sex offense. (Pen. Code, § 293.)

   By restricting disclosure, upon request, of the names of victims of, and witnesses to, specified gang related offenses, this bill would provide similar limits, currently existing, regarding disclosure of information for victims of specified sex related offenses.

5) **Proposed Amendments to Be Adopted in Committee:**

   a) Limit disclosure to the name of victims of, and witnesses to, specified gang related offenses;

   b) Require that police officers who receive a report involving specified gang related offenses, inform the victim and any witnesses, that their name will become a matter of public record unless they request that it not become a matter of public record;

   c) Require victims and witnesses of specified gang related offenses to request that their names not become a matter of public record, to trigger the non-disclosure provisions of this bill; and,

   d) Delete language that would have prohibited the disclosure of the name and address of victims of, and witnesses to, gang related offenses, under the CPRA for any reason.

6) **Argument in Support**: According to *Mothers & Men Against Gangs Coalition (MAG),* "The mission and vision of MAG Coalition is to create a nonviolent community, assist in healing victims of violent crimes, raise crime victim awareness, increase family and community unity, and to deter gang violence. In an effort to follow this mission and vision, MAG Coalition nurtures community partnerships to create safe activities, programs, and policies that educate and empower everyone with knowledge, strength and faith to combat gang violence. It is with this in mind that MAG Coalition is supporting the efforts of California State Assembly Members Jordan Cunningham and Eduardo Garcia.

   "Protecting this sensitive information will encourage those who were afraid to now bring forth information pertaining to gang-related crimes and ensure people feel safe in their own communities. AB 2013 will send a message to all those afflicted by gang crimes that no more will they be able to terrorize and intimidate victims and witnesses. This bill will add another tool for law enforcement to use in order to secure accurate, hones, and timely

statements on instances where a gang crime has been committed.

"With a statewide rise in gang-related crime, California must act to protect both victims and witnesses of gang crimes who want to cooperate with authorities, but fear retaliation. For far too long, gang crime has plagued our state and it is time we act to help bring justice for both victims and witnesses.

"Mothers & Men Against Gangs Coalition supports this measure because our family and community has been afflicted with the realization of the reluctance of witnesses and victims to come forward to provide valuable testimony that would ultimately bring justice for the victims of gang crimes."

7) **Argument in Opposition:** According to the *American Civil Liberties Union of California*, "Public disclosure of government records is a core tenet of democracy. Without it, the public cannot exercise oversight and control of public officials. This oversight is particularly critical when it comes to law enforcement records, which contain information regarding the exercise of police powers. Indeed, long before the enactment of the CPRA, the Sixth Amendment of the U.S. Constitution required public trials of criminal prosecutions. Openness of public records in criminal proceedings is essential to ensuring that the public can scrutinize the fairness of the criminal justice system – the system whereby the government can take the liberty, or even the life, of an individual.

"By allowing any victim or witness in a gang-related case to request that their name not be released, AB 2013 could impede the efforts of a journalist, an academic, or a community organization to research how the statutes regarding gang-related crimes are enforced, or how gang crime affects the community, even when there is no indication that the release of the victim's or witness's name would pose any danger.

Where the release of a victim's or witness's name could endanger that person, existing law already provides that the information need not be released. (Government Code § 6254(f).) Nor are law enforcement agencies required to release victim or witness names when doing so could harm and investigation. (*Id.*)"

8) **Prior Legislation**:

   a) AB 2498 (Bonta), Chapter 644, Statutes of 2016, authorized, at the request of a victim, the withholding of the names and images of a victim of human trafficking and that victim's immediate family, as defined and as specified, from disclosure pursuant to the CPRA until the investigation or any subsequent prosecution is complete.

   b) AB 2611 (Low), of the 2015-2016 Legislative Session, would have placed a blanket restriction on the disclosure of a video or audio recording that depicts the death of a peace officer in the line of duty, unless the peace officer's family consents to disclosure. AB 2611 was held in the Assembly Judiciary Committee after the bill returned to the Assembly for concurrence.

   c) AB 2843 (Chau), Chapter 830, Statutes of 2016, extended an existing provision of the CPRA that exempts from disclosure the home addresses and home phone numbers of

state employees and employees of a school district or county office of education to include the employee's personal cell phone number and personal email address.

REGISTERED SUPPORT / OPPOSITION:

Support

California Police Chiefs Association
California State Sheriffs' Association
Crime Victims United of California
Los Angeles County Professional Peace Officers Association
Mothers & Men Against Gang Violence

Opposition

American Civil Liberties Union of California

Analysis Prepared by: David Billingsley / PUB. S. / (916) 319-3744

Amended Mock-up for 2017-2018 AB-2013 (Cunningham (A) , Eduardo Garcia (A))

Mock-up based on Version Number 99 - Introduced 2/5/18
Submitted by: David Billingsley, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Records contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) (1) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, ~~subject to paragraph (4),~~ state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, this subdivision does not require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.

(2) Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

(3) Notwithstanding any other provision of this subdivision ~~other than paragraph (4)~~, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(A) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(B) (i) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the

factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of, ***or witness to,*** any crime defined by ***subdivision (a) or (d) of Section 186.22 of the Penal Code, or the name of a victim of any crime defined by*** Section 220, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code, may be withheld at the victim's ***or witness's*** request, or at the request of the victim's ***or witness's*** parent or guardian if the victim ***or witness*** is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined in any of the sections of the Penal Code set forth in this subdivision may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(ii) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the names and images of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, and of that victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, may be withheld at the victim's request until the investigation or any subsequent prosecution is complete. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(iii) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, if the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code. However, the address of the victim of any crime defined by Section 220, 236.1, 261, 261.5, 262, 264, 264.1, 265, 266, 266a, 266b, 266c, 266e, 266f, 266j, 267, 269, 273a, 273d, 273.5, 285, 286, 288, 288a, 288.2, 288.3, 288.4, 288.5, 288.7, 289, 422.6, 422.7, 422.75, 646.9, or 647.6 of the Penal Code shall remain confidential. Address information obtained pursuant to this clause shall not be used directly or indirectly, or furnished to another, to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury. This clause shall not be construed to prohibit or limit a scholarly, journalistic, political, or government use of address information obtained pursuant to this clause.

~~(4) Notwithstanding any other provision of this subdivision, the name and address of a victim of and the name and address of any witnesses to an incident, if the criminal offense charged is described in subdivision (a) or (e) of Section 186.22 of the Penal Code, shall be withheld.~~

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of Division 14 of Title 3 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary. However, public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, if an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) (1) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees

who do not have full collective bargaining and representation rights under these chapters. This paragraph shall not be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this paragraph.

(2) Records of local agencies related to activities governed by Chapter 10 (commencing with Section 3500) of Division 4, that reveal a local agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under that chapter. This paragraph shall not be construed to limit the disclosure duties of a local agency with respect to any other records relating to the activities governed by the employee relations act referred to in this paragraph.

(q) (1) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

(2) Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. If a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

(3) Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's Office. The committee and that office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in Sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Care Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of prosecutors, public defenders, peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 26150, 26155, 26170, or 26215 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, and that reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or the department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or the department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff or the department or its staff, or records that provide instructions, advice, or training to their employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.3 (commencing with Section 12695), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code, or Chapter 2 (commencing with Section 15810) or Chapter 4 (commencing with Section 15870) of Part 3.3 of Division 9 of the Welfare and Institutions Code, on or after July 1, 1991, shall be open to inspection one year after their effective dates.

(B) If a contract that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (3).

(w) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 8 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contracts or amendments to the contracts are open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board and the State Department of Health Care Services related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, if the records reveal any of the following:

(A) The deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board or the department, entities with which the board or department is considering a contract, or entities with which the board or department is considering or enters into any other arrangement under which the board or department provides, receives, or arranges services or reimbursement.

(B) The impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code shall be open to inspection one year after their effective dates.

(B) If a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code or Sections 14005.26 and 14005.27 of, or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of, the Welfare and Institutions Code, is amended, the amendment shall be open to inspection one year after the effective date of the amendment.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or the department or its staff, shall also apply to the contracts, deliberative processes, discussions, communications, negotiations, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4

(commencing with Section 12699.50) of Division 2 of the Insurance Code or Chapter 3 (commencing with Section 15850) of Part 3.3 of Division 9 of the Welfare and Institutions Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (f) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(ab) Critical infrastructure information, as defined in Section 131(3) of Title 6 of the United States Code, that is voluntarily submitted to the Office of Emergency Services for use by that office, including the identity of the person who or entity that voluntarily submitted the information. As used in this subdivision, "voluntarily submitted" means submitted in the absence of the office exercising any legal authority to compel access to or submission of critical infrastructure information. This subdivision shall not affect the status of information in the possession of any other state or local governmental agency.

(ac) All information provided to the Secretary of State by a person for the purpose of registration in the Advance Health Care Directive Registry, except that those records shall be released at the request of a health care provider, a public guardian, or the registrant's legal representative.

(ad) The following records of the State Compensation Insurance Fund:

(1) Records related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) Records related to the discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the fund, and any related deliberations.

(3) Records related to the impressions, opinions, recommendations, meeting minutes of meetings or sessions that are lawfully closed to the public, research, work product, theories, or strategy of the fund or its staff, on the development of rates, contracting strategy, underwriting, or competitive strategy pursuant to the powers granted to the fund in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

(4) Records obtained to provide workers' compensation insurance under Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, including, but not limited to, any medical claims information, policyholder information provided that nothing in this paragraph shall be interpreted to prevent an insurance agent or broker from obtaining proprietary information or other information authorized by law to be obtained by the agent or broker, and information on rates, pricing, and claims handling received from brokers.

(5) (A) Records that are trade secrets pursuant to Section 6276.44, or Article 11 (commencing with Section 1060) of Chapter 4 of Division 8 of the Evidence Code, including without limitation, instructions, advice, or training provided by the State Compensation Insurance Fund to its board members, officers, and employees regarding the fund's special investigation unit, internal audit unit, and informational security, marketing, rating, pricing, underwriting, claims handling, audits, and collections.

(B) Notwithstanding subparagraph (A), the portions of records containing trade secrets shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(6) (A) Internal audits containing proprietary information and the following records that are related to an internal audit:

(i) Personal papers and correspondence of any person providing assistance to the fund when that person has requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn, or upon order of the fund.

(ii) Papers, correspondence, memoranda, or any substantive information pertaining to any audit not completed or an internal audit that contains proprietary information.

(B) Notwithstanding subparagraph (A), the portions of records containing proprietary information, or any information specified in subparagraph (A) shall be available for review by the Joint Legislative Audit Committee, California State Auditor's Office, Division of Workers' Compensation, and the Department of Insurance to ensure compliance with applicable law.

(7) (A) Except as provided in subparagraph (C), contracts entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code shall be open to inspection one year after the contract has been fully executed.

(B) If a contract entered into pursuant to Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(C) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(D) Notwithstanding any other law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to this paragraph.

(E) This paragraph is not intended to apply to documents related to contracts with public entities that are not otherwise expressly confidential as to that public entity.

(F) For purposes of this paragraph, "fully executed" means the point in time when all of the necessary parties to the contract have signed the contract.

This section does not prevent any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

This section does not prevent any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act (29 U.S.C. Sec. 158).

SEC. 2. Section 186.37 is added to the Penal Code, to read:

186.37. ***(a) An employee of a law enforcement agency who personally receives a report alleging the commission of an offense defined in subdivision (a) or (d) of Section 186.22, shall inform the victim and any witnesses, that their name will become a matter of public record unless they request that it not become a matter of public record, pursuant to subdivision (f) of Section 6254 of the Government Code.***

(b) A written report of an offense defined in subdivision (a) or (d) of Section 186.22 shall indicate that the alleged victim and any witnesses have been properly informed pursuant to subdivision (a) and shall memorialize their responses.

~~(a)~~ ***(c)*** ~~A~~ ***Except as provided in subdivision (d), a*** law enforcement agency shall not~~, without a court order based on a finding of good cause,~~ disclose to a person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the name ~~or address~~ of a person who alleges to be the victim of, or who is reported as a witness to, an offense described in subdivision (a) ~~or (c)~~ ***(d)***of Section 186.22 ***when the victim or witness has requested, pursuant to subdivision (f) of Section 6254 of the Government Code, the withholding of the victim's or witness's name***.

~~(b)~~ ***(d)*** Parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, and probation officers of county probation departments shall be entitled to receive information pursuant to subdivision ~~(a)~~ ***(c)*** only if the person to whom the information pertains alleges that he or she is the victim of, or the person is reported as a witness to, an offense described in subdivision (a) ~~or (c)~~ of Section 186.22, if the alleged perpetrator of which is a parolee who is alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer, is otherwise subject to supervision or the jurisdiction of a county probation department, or is under investigation by a county probation department.

SEC. 3. Section 293 of the Penal Code is amended to read:

293. (a) An employee of a law enforcement agency who personally receives a report from a person, alleging that the person making the report has been the victim of a sex offense, shall inform that person that his or her name will become a matter of public record unless he or she requests that it not become a matter of public record, pursuant to Section 6254 of the Government Code.

(b) A written report of an alleged sex offense shall indicate that the alleged victim has been properly informed pursuant to subdivision (a) and shall memorialize his or her response.

(c) A law enforcement agency shall not disclose to a person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the address of a person who alleges to be the victim of a sex offense.

(d) A law enforcement agency shall not disclose to a person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies where authorized or required by law, the name of a person who alleges to be the victim of a sex offense if that person has elected to exercise his or her right pursuant to this section and Section 6254 of the Government Code.

(e) A law enforcement agency shall not disclose to a person, except the prosecutor, parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, probation officers of county probation departments, or other persons or public agencies if authorized or required by law, names, addresses, or images of a person who alleges to be the victim of human trafficking, as defined in Section 236.1, or of that alleged victim's immediate family, other than a family member who is charged with a criminal offense arising from the same incident, and that information and those images shall be withheld and remain confidential. The law enforcement agency shall orally inform the person who alleges to be the victim of human trafficking of his or her right to have his or her name, addresses, and images, and the names, addresses, and images of his or her immediate family members withheld and kept confidential pursuant to this section and Section 6254 of the Government Code. For purposes of this subdivision, "immediate family" shall have the same meaning as that provided in paragraph (3) of subdivision (b) of Section 422.4 of the Penal Code.

(f) For purposes of this section, sex offense means any crime listed in clause (i) of subparagraph (B) of paragraph (3) of subdivision (f) of Section 6254 of the Government Code.

(g) Parole officers of the Department of Corrections and Rehabilitation, hearing officers of the parole authority, and probation officers of county probation departments shall be entitled to receive information pursuant to subdivisions (c), (d), and (e) only if the person to whom the information pertains alleges that he or she is the victim of a sex offense or is the victim of human trafficking, as defined in Section 236.1, the alleged perpetrator of which is a parolee who is

alleged to have committed the offense while on parole, or in the case of a county probation officer, the person who is alleged to have committed the offense is a probationer or is under investigation by a county probation department.

SEC. 4. The Legislature finds and declares that Sections 1 and 2 of this act, which amend Section 6254 of the Government Code and add Section 186.37 to the Penal Code, respectively, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy and safety of victims of, and witnesses to, gang-related offenses, it is necessary to limit the public's right of access to the personal information of those victims and witnesses.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Date of Hearing: April 3, 2018
Consultant: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2222 (Quirk) – As Amended April 2, 2018

SUMMARY: Requires all law enforcement agencies to report to the Department of Justice (DOJ) information about each firearm reported lost, stolen, or recovered, and requires the DOJ to submit a report to the Legislature outlining law enforcement agency compliance with the new reporting requirement. Specifically, **this bill**:

1) Requires all law enforcement agencies in the state to input information regarding each firearm that has been reported stolen, lost, found, recovered, held for safekeeping, or under observation, into the DOJ's Automated Firearms System within three days after being notified.

2) Defines a "law enforcement agency" as "a police or sheriff's department, or any department or agency of the state or any political subdivision thereof that employs any peace officer as defined."

3) Requires firearm information entered into the Automated Firearms System to remain in the system until the reported firearm is found, recovered, no longer under observation, or determined to have been entered erroneously.

4) States that any costs incurred by the DOJ in the implementation of the Automated Firearms System must be reimbursed by funds other than the fund resulting from fees relating to the sale, lease, or transfer of firearms.

5) Mandates the DOJ to submit a report to the Legislature, on or before July 1, 2020, detailing law enforcement agency compliance with the new reporting requirements and possible recommendations for improving compliance.

6) Makes conforming cross-referencing changes.

EXISTING LAW:

1) Provides that every person who knows or reasonably should have known that their firearm was stolen or lost, must report that information to a local law enforcement agency. (Pen. Code, § 25250.)

2) Mandates every person reporting a lost or stolen firearm to report the make, model, and serial number of the firearm. (Pen. Code, § 25270.)

3) States that each sheriff or police chief executive shall submit descriptions of property which has been reported stolen, lost, found, recovered, held for safekeeping, or under observation,

into the appropriate DOJ automated property system for bicycles, vehicles, firearms, or other property. (Pen. Code, § 11108, subd. (a).)

4) Requires information entered into the DOJ's Automated Firearms System to remain in the system until the firearm has been found, recovered, is no longer observation, or was found to have been entered erroneously. (Pen. Code, § 11108, subd. (b).)

5) Requires every sheriff or police chief to submit a description of each firearm that has been reported lost or stolen directly into the DOJ Automated Firearms System. (Pen. Code, § 25260.)

6) Authorizes every local law enforcement agency to enter firearm information, as specified, needed to investigate crimes into the United States Department of Justice, National Integrated Ballistics Information Network. (Pen. Code, § 11108.10.)

7) States that a police or sheriff's department shall, and any other law enforcement agencies may, report to the DOJ all available information necessary to identify and trace the history of all recovered firearms that were illegally possessed, used in a crime, or are suspected of having been used in a crime. The DOJ, upon receiving such information, must promptly forward it to the National Tracing Center of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives to the extent practicable. (Pen. Code, § 11108.3.)

8) Requires a law enforcement agency, upon identifying serialized property and entering it into the DOJ's appropriate automated property system, to notify the owner or person laying claim to the property within fifteen days of making the identification. (Pen. Code, § 11108.5.)

9) Prohibits a law enforcement agency or court, which has taken custody of a firearm, from returning it to any individual unless the individual presents evidence from the DOJ that they are eligible to possess firearms, or the agency or court is able to verify that the firearm was not listed stolen in the Automated Firearms System. If the firearm has been listed as lost or stolen—the owner shall be notified, as specified. (Pen. Code, § 33855.)

10) Provides that any person claiming title to a firearm in the custody or control of a law enforcement agency or court, must apply for a determination by the DOJ as to whether the applicant is eligible to possess a firearm, as specified. (Pen. Code, § 33850.)

11) Requires the DOJ to permanently keep and properly file all information reported to the DOJ pursuant to applicable firearm laws, as specified. (Pen. Code, § 11106.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2222 will ensure data on every firearm used in a crime and recovered by any law enforcement agency is logged into the Department of Justice's Automated Firearm System. This will help law enforcement and the Department of Justice better recognize patterns in gun trafficking, figure out where guns used in crimes are coming from, and stop criminals from possessing them."

2) **Significance of Trace Data for Lost or Stolen Firearms**: According to the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), "Lost and stolen firearms pose a substantial threat to public safety and to law enforcement. Those that steal firearms commit violent crimes with stolen guns, transfer stolen firearms to others who commit crimes, and create an unregulated secondary market for firearms, including a market for those who are prohibited by law from possessing a gun… Lost firearms pose a similar threat. Like stolen firearms, they are most often bought and sold in an unregulated secondary market where law enforcement is unable to trace transactions." (US Bureau of Alcohol, Tobacco, Firearms and Explosives, (2013). *2012 Summary: Firearms Reported Lost and Stolen.* <https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download> [Mar. 22, 2018].)

   Such lost or stolen firearms may become "crime guns" which are defined as, "any firearm used in a crime or suspected to have been used in a crime. This may include firearms abandoned or otherwise taken into law enforcement custody that are either suspected to have been used in a crime or whose proper disposition can be facilitated through a firearms trace." Upon recovery of a crime gun, law enforcement officers "trace" it, which involves systematically tracking the movement of a recovered firearm back to its importation into, or manufacture in, the United States through the distribution chain and to the point of its first retail sale. (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*. <https://www.atf.gov/file/58631/download> [Mar. 23, 2018].)

   From a general perspective, tracing a crime gun back to its origins can help law enforcement identify patterns in the supply of gun trafficking by locating, and investigating, the circumstances surrounding a gun that leaves the legal marketplace and enters the illicit secondary market. (Brady Campaign to Prevent Gun Violence. *The Sources of Crime Guns: How City Officials Can Reduce Gun Deaths & Injuries in Their Communities*.) For individual cases, tracing can help develop potential witnesses, prove ownership, and can generate investigative leads. (ATF. (2011). *Firearms Tracing Guide: Tracing Firearms to Reduce Violent Crime*. <https://www.atf.gov/file/58631/download> [Mar. 23, 2018].)

3) **National Firearms Tracing Laws**: Federally, the ATF has been delegated as the sole agency authorized to trace firearms, which it administers through its National Tracing Center. (ATF. (2016). *Fact Sheet – National Tracing Center*. <https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center> [Mar. 23, 2018].)

   At the federal level, there is no requirement for private citizens or law enforcement agencies to report lost or stolen firearms. (US Bureau of Alcohol, Tobacco, Firearms and Explosives. (2013). *2012 Summary: Firearms Reported Lost and Stolen*. <https://www.atf.gov/resource-center/docs/2012-firearms-reported-lost-and-stolenpdf-1/download> [Mar. 22, 2018].) Conversely, all federal firearms licensees (FFLs) are required to report a theft or loss within 48 hours of discovery. (27 C.F.R. § 478.39a (a) (1).)

   The ATF has cited private citizen reporting requirements as an impairment to its ability to effectively trace guns, stating:

   "Reporting by law enforcement is voluntary, not mandatory, and thus the statistics in this report likely reveal only a fraction of the problem. Additionally, even where state and local law enforcement are consistently reporting statistics, many states do not require private

citizens to report the loss or theft of a firearm to local law enforcement in the first place. As such, many lost and stolen firearms go entirely unreported. Moreover, even if a firearm is reported as lost or stolen, individuals often are unable to report the serial number to law enforcement because they are not required to record the serial number or maintain other records of the firearms they own for identification purposes. As a result, many lost and stolen firearms enter secondary and illicit markets with their status undocumented and undetectable."

Regarding the more stringent reporting requirements for FFLs, the ATF strikes a different tone, stating:

"ATF's accounting of firearms lost or stolen from FFLs is more accurate. In 1994, Congress enacted requirements that FFLs report the theft or loss of any firearm from their inventories to both ATF and local police within 48 hours of discovery. This mandatory reporting requirement accounts for lost inventory and allows law enforcement to respond expeditiously to thefts from FFLs. Most often, these reports provide law enforcement with serial numbers and reliable descriptions. This information is closely managed to ensure that whenever law enforcement recovers a firearm lost by or stolen from a federally-licensed dealer, the recovery data is promptly provided to ATF and local authorities. In the case of theft, this information assists in the identification, apprehension, and prosecution of the thieves." (ATF. (2011). *Firearms Tracing Guide:Tracing Firearms to Reduce Violent Crime.* <https://www.atf.gov/file/58631/download> [Mar. 23, 2018].)

4) **California's Firearm Tracing Laws**: California law closely resembles the federal provisions for FFLs. California law is more comprehensive in that it requires all private citizens to report lost or stolen firearms to the local law enforcement agency in the jurisdiction. (Pen. Code, § 25250.) However, California law requires only sheriffs and police chief executives to forward such information to the state DOJ's Automated Firearms System. (Pen. Code, § 11108.)

   This bill would extend the local law enforcement agency reporting requirement to include *all* peace officers within the state, including the Department of Highway Patrol, University of California and California State University Police Departments, and other police departments, as specified. The end result would be a more comprehensive tracing scheme for law enforcement to utilize when tracing a crime gun.

5) **Argument in Support**: According to the *Brady Campaign to Prevent Gun Violence*, "Existing law requires police and sheriffs' departments to submit the description of firearms which has been reported stolen, lost, found, recovered, or under observation, directly into the California Department of Justice's (Cal DOJ) Automated Firearms System (AFS). Existing law also requires police and sheriffs' departments to report to Cal DOJ all available information necessary to identify and trace the history of all recovered firearms that are illegally possessed, have been used in a crime, or are suspected of having been used in a crime. This bill will extend these requirements to *all* law enforcement agencies, as defined, and requires that the information be submitted *within three days*.

   "In 2012, the International Association of Chiefs of Police adopted a resolution titled *Regional Crime Gun Processing Protocols*, which recommends the "timely and comprehensive tracing of all crime guns through ATF and eTrace". The resolution finds that

technology tools such as eTrace can help police develop and share information about the identity of armed criminals across wide geographic regions and can provide law enforcement with timely and actionable information to help identify and apprehend armed criminals before they do more harm.

"AB 2222 seeks to facilitate consistent and prompt submission of firearm information into AFS, which will improve Cal DOJ's databases and systems and ensure that all recovered firearms are being traced. Additionally, the bill directs Cal DOJ to submit a report to the Legislature regarding law enforcement agency compliance and make recommendations if tracing submissions are deficient. For these reasons, the California Brady Campaign strongly supports AB 2222 and asks for your AYE vote."

6) **Argument in Opposition**: According to the *California Law Enforcement Association of Record Supervisors, Inc.*, "We agree that existing law on the tracing of stolen weapons is a valuable tool for law enforcement to identify illegal firearm sales and firearm smuggling. We also agree that a uniform timeframe for cataloguing this data should be in place so law enforcement is working with the most up-to-date and complete information. However, as proposed by AB 2222, the prescriptive three-day reporting time line is impractical. The procedure whereby a confiscated firearm has to be documented by an evidence technician is often time consuming and requires thoroughness."

7) **Related Legislation**: AB 2781 (Low), would require law enforcement agencies to test actual and possible crime guns and submit the ballistic images to the National Integrated Ballistic Identification Network. AB 2781 is pending a hearing in the Assembly Public Safety Committee.

8) **Prior Legislation**: AB 1060 (Liu), Chapter 715, Statutes of 2005, required every sheriff or police chief executive to enter information about certain firearms into the Automated Firearms System and required such information to remain in the system until the reported firearm was found, recovered, no longer under observation, or was determined to be entered erroneously.

REGISTERED SUPPORT / OPPOSITION:

Support

Brady Campaign to Prevent Gun Violence (Sponsor)
Giffords Law Center to Prevent Gun Violence

Opposition

California Law Enforcement Association of Record Supervisors, Inc.

Analysis Prepared by: Mureed Rasool / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2226 (Patterson) – As Introduced February 13, 2018
As Proposed to be Amended in Committee

SUMMARY: Allows the court to order victim restitution to cover the costs of installing a residential security system in domestic violence cases. Specifically, **this bill**:

1) Expands the court's authority to order victim restitution to cover the costs of installing a residential security system in domestic violence crimes, not just cases involving violent felonies.

2) Increases the allowable reimbursement for installing a residential security system by the California Victims Compensation Board (board) from $1,000 to $5,000.

EXISTING LAW:

1) Requires the sentencing court to order the defendant to pay victim restitution to fully reimburse the victim for economic losses resulting from the defendant's criminal conduct. (Pen. Code, § 1202.4, subd. (f)(3).)

2) States that economic losses include, in pertinent part, "expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks." (Pen. Code, § 1202.4, subd. (f)(3)(J).)

3) Establishes the board to operate the California Victim Compensation Program (CalVCP). (Gov. Code, § 13950 et. seq.)

4) Provides than an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

5) Authorizes the board to reimburse for pecuniary loss for the following types of losses:

   a) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;

   b) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services;

   c) Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death,

d) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;

e) The expense of installing or increasing residential security, not to exceed $1,000;

f) The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary;

g) Relocation expenses up to $2,000 if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and,

h) Funeral or burial expenses. (Gov. Code, §§ 13957, subd. (a) & 13957.5, subd. (a).)

6) Limits the total award to or on behalf of each victim or derivative victim to $70,000. (Gov. Code, §§ 13957, subd. (b), & 13957.5, subd. (b).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "AB 2226 will expand the court's authority to order restitution for victims of stalking, even in instances of non-violent crimes. By doing so, it will help victims of domestic violence, stalking, and other crimes receive justice and once again feel safe in their homes."

2) **Authority to Order Restitution for Residential Security Expenses**: Penal Code section 1202.4, subdivision (f)(3)(J) provides for restitution in the following circumstances: "Expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks."

   There is a split of authority as to whether the statute's language limits court authority to order restitution for residential security only in cases in which the defendant has been convicted of, or pleads guilty to, a violent felony.

   In *People v. Salas* (2017) 9 Cal.App.5th 736, 744, the court held that "The statute's plain language and legislative history, and . . . principles of statutory construction, support [the] conclusion that residential security expenses are recoverable under section 1202.4, subdivision (f)(3)(J) only when they are 'incurred related to a violent felony as defined in section 667.5, subdivision (c).'" The language of the statute is clear and, if possible, significance should be given to every possible word. (*Id.* at pp. 742-743.) The legislative history also supports this interpretation because until 2012, restitution for home security was available for any crime. The legislature then revised the language to limit application only to violent crimes. (*Id.* at p. 742.) Since defendant's domestic violence conviction is not an offense listed in Penal Code section 667.5, subdivision (c), it is not a violent felony for

purposes of awarding restitution for a residential security system.[1] (*People v. Salas, supra,* 9 Cal.App.5th at p. 744.)

In contrast, the court in *People v. Henderson* (2018) 20 Cal.App.5th 467, held that the fact that a defendant is not convicted of a violent felony does not preclude the court from ordering restitution for the costs of residential security under the general provisions of the restitution statute, which provides that "the restitution order … shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to" the enumerated losses. (*Id.* at p. 471, citing Pen. Code, § 1202.4, subd. (f)(3).) This language "expressly states that the enumerated list, including subparagraph (J), is a *non-exclusive* list of examples." (*Ibid.*, emphasis in original.) Based on this, the *Henderson* court held that a trial court may include home security costs in a restitution order regardless of the crime of conviction. (*Id.* at p. 472.)

The question of whether the trial court abuses its discretion by ordering a defendant to pay restitution to cover the costs of residential security expenses when the defendant is not convicted of a violent felony is currently pending before the California Supreme Court in *People v. Calavano* review granted Aug. 9, 2017 (S242474), previously nonpub. opn. (H042950) May 4, 2017.

This bill would expand the court's authority to order victim restitution for costs of residential security in domestic violence cases, which do not necessarily always qualify as violent felonies.

3) **CalVCP**: The CalVCP provides compensation for victims of violent crime, or more specifically those who have been physically injured or threatened with injury. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, and home security. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as from federal matching funds. (See board Website <http://www.vcgcb.ca.gov/board>.)

4) **Gap Analysis Report**: In July 2015, the board issued the third in a series of reports which sought to determine the unmet needs of crime victims and barriers to services for crime victims. This final report outlined gaps in current services and compensation provided under CalVCP. (See *Gap Analysis Report: California's Underserved Crime Victims and their Access to Victim Services and Compensation*, July 2015, <http://vcgcb.ca.gov/victims/ovcgrant2013/deliverables/CalVCPGapAnalysis-OVCGrant2013.pdf >.) The report noted that the following unmet financial needs were among the more commonly identified by victims:

    - Victims who received funeral and burial compensation stated that the actual cost of the services exceeded the CalVCP reimbursement limit.

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[1] The charges initially alleged a great bodily injury enhancement, which would have qualified the domestic violence offense as a violent felony, but that allegation was eventually dismissed. (*Id.* at p. 739.)

- Victims stated that the amounts for relocation expenses were inadequate to cover the actual costs of relocation.
- Mental health providers stated that victims' lack of access to transportation creates difficulty accessing mental health treatment.
- Victims and advocates noted that lack of access to transportation was a barrier to obtaining other needed services.
- Childcare expenses are not currently reimbursed by CalVCP, further limiting some victims' access to medical or mental health services.
- Victims need to be reimbursed for lost wages for time taken from work to access services or attend crime-related appointments. (*Id.* at p. 7.)

This bill proposes to increase the limit for residential security costs from $1,000 to $5,000. Notably, the gap analysis report did not identify the limits on residential security costs as one which victims found to be inadequate.

5) **Financial Condition of the CalVCP**: The Legislative Analyst's Office has informed this committee that restitution fund revenue is depleting and that the fund is facing insolvency. Based on budget documents the LAO has provided this committee with the following figures regarding the financial status of the CalVCP[2]:

Restitution Fund (in thousands)	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18 (estimated)	FY 2018-19 (projected)
Adjusted Beginning Balance	$76,765	$85,759	$86,789	$68,530	$48,434
Revenues	$102,292	$96,433	$87,177	$70,704	$68,138
Expenditures	$93,301	$122,092	$105,439	$90,801	$90,823
Net Revenue	$8,991	($25,659)	($18,262)	($20,097)	($22,685)
Fund Balance	$85,756	$60,100	$68,527	$48,433	$25,749

While this bill does not increase the total amount a victim can be reimbursed by CalVCP ($70,000), it does provide for a significant increase in the reimbursement for residential security. Does it make sense to increase services while revenue is depleting and there are concerns about insolvency?

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[2] The figures are represented are in thousands. So, for example, the projected fund balance for FY 2018-2019 is $25,749,000.

6) **Argument in Support**: According to the *California District Attorneys Association*, "Under Penal Code section 1202.4(f)(3)(J), the court is authorized to order victim restitution for expenses to install or increase residential security only if the defendant is convicted of a violent felony. This means that a number of crimes for which a victim is likely to need increased security, such as domestic violence, assault with a deadly weapon, stalking, or gang-related crimes, do not qualify for this type of restitution. This bill will allow victims of all crimes to access this restitution.

"The CVCB is authorized to use this reimbursement only for crime victims who have sustained injury or death as a direct result of a specified crime. (Gov't C. 13957(a)(5).) The current limit for reimbursement is $1,000, which is too low for this kind of restitution. Increasing the amount of reimbursement to $5,000 will provide victims the necessary resources for them to feel safer in their home."

7) **Related Legislation**:

a) AB 1939 (Steinorth) would include temporary housing for the victim's pets as part of relocation expenses which are reimbursable by the board. AB 1939 will be heard in this committee today.

b) AB 2100 (Bonta) would extend the limitation on reimbursement for peer counseling services from10 weeks of counseling services to 26 weeks of counseling services and establishes a reimbursement rate for the providers of these services. AB 2100 is pending in the Assembly Appropriations Committee.

c) SB 1005 (Atkins) would include a pet deposit and additional rent required if the victim has a pet in relocation expenses reimbursable by the board. SB 1005 will be heard in the Senate Public Safety Committee today.

d) SB 1232 (Bradford) would require an application for compensation under CalVCP to be filed within 3 years after the victim attains 21 years of age, instead of 18, except as specified. SB 1232 is pending in the Senate Public Safety Committee.

8) **Prior Legislation**:

a) AB 1061 (Gloria) would have expanded eligibility for compensation under the CalVCP and increases compensation limits for specified losses which are already reimbursed, including increasing limits for reimbursement of installing or increasing residential security from $1,000 to $2,000. AB 1061 was held in the Assembly Appropriations Committee.

b) AB 2160 (Bonta), of the 2015-2016 Legislative Session, was substantially similar AB 1061 (Gloria). AB 2160 was held in the Assembly Appropriations Committee.

c) AB 1140 (Bonta), Chapter 569, statutes of 2015, revised standards for involvement in a crime and for cooperation with the board in various circumstances; authorized compensation for non-consensual distribution of sexual images of minors, and revised various other rules governing the CalVCP.

REGISTERED SUPPORT / OPPOSITION:

Support

California District Attorneys Association
Crime Victims United of California

Opposition

None

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Amended Mock-up for 2017-2018 AB-2226 (Patterson (A))

Mock-up based on Version Number 99 - Introduced 2/13/18
Submitted by: Sandy Uribe, Assembly Public Safety Committee

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13957 of the Government Code is amended to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim for services that were provided by a licensed medical provider, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, grandparent, sibling, child, grandchild, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed five thousand dollars ($5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A minor who suffers emotional injury as a direct result of witnessing a violent crime and who is not eligible for reimbursement of the costs of outpatient mental health counseling under any other provision of this chapter. To be eligible for reimbursement under this clause, the minor must have been in close proximity to the victim when he or she witnessed the crime.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraph (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed in California to provide those services, or who is properly supervised by a person who is licensed in California to provide those services, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(4) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(5) Reimburse the expense of installing or increasing residential security, not to exceed five thousand dollars ($5000). Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(6) Reimburse the expense of renovating or retrofitting a victim's residence, or the expense of modifying or purchasing a vehicle, to make the residence or the vehicle accessible or operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(7) (A) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime giving rise to the relocation. The board may authorize more than one relocation per crime if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars ($2,000). For purposes of this paragraph a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. A victim may be required to repay the relocation payment or reimbursement to the board if he or she violates the terms set forth in this paragraph.

(E) Notwithstanding subparagraphs (A) and (B), the board may increase the cash payment or reimbursement for expenses incurred in relocating to an amount greater than two thousand dollars ($2,000), if the board finds this amount is appropriate due to the unusual, dire, or exceptional circumstances of a particular claim.

(F) If a security deposit is required for relocation, the board shall be named as the recipient and receive the funds upon expiration of the victim's rental agreement.

(8) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars ($7,500). The board shall not create or comply with a regulation or policy that mandates a lower maximum potential amount of an award pursuant to this subparagraph for less than seven thousand five hundred dollars ($7,500).

(9) When the crime occurs in a residence or inside a vehicle, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars ($1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(10) When the crime is a violation of Section 600.2 or 600.5 of the Penal Code, the board may reimburse the expense of veterinary services, replacement costs, or other reasonable expenses, as ordered by the court pursuant to Section 600.2 or 600.5 of the Penal Code, in an amount not to exceed ten thousand dollars ($10,000).

(11) An award of compensation pursuant to paragraph (5) of subdivision (f) of Section 13955 shall be limited to compensation to provide mental health counseling and shall not limit the eligibility of a victim for an award that he or she may be otherwise entitled to receive under this part. A derivative victim shall not be eligible for compensation under this provision.

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars ($35,000), except that this award may be increased to an amount not exceeding seventy thousand dollars ($70,000) if federal funds for that increase are available.

SEC. 2. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime.

(2) Upon a person being convicted of a crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense. If the person is convicted of a felony, the fine shall not be less than three hundred dollars ($300) and not more than ten thousand dollars ($10,000). If the person is convicted of a misdemeanor, the fine shall not be less than one hundred fifty dollars ($150) and not more than one thousand dollars ($1,000).

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of the minimum fine pursuant to paragraph (1) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the minimum fine pursuant to paragraph (1) of subdivision (b). The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution fine if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the minimum fine pursuant to paragraph (1) of subdivision (b), the court shall consider any relevant factors, including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments authorized in Section 1464 or Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, or the state

surcharge authorized in Section 1465.7, and shall be deposited in the Restitution Fund in the State Treasury.

(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to Chapter 8 (commencing with Section 11469) of Division 10 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion. A victim at a restitution hearing or modification hearing described in this paragraph may testify by live, two-way audio and video transmission, if testimony by live, two-way audio and video transmission is available at the court.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of a third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited in the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the California Victim Compensation Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include commission income as well as base wages. Commission income

shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include commission income as well as base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288, 288.5, or 288.7.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to ~~a crime~~ **a violation of Section 273.5, or a violent felony as defined in subdivision (c) of Section 667.5**, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(L) Expenses for a period of time reasonably necessary to make the victim whole, for the costs to monitor the credit report of, and for the costs to repair the credit of, a victim of identity theft, as defined in Section 530.5.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) A report submitted pursuant to subparagraph (D) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) A stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) A report by the probation officer, or information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). A defendant who willfully states as true a material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(12) In cases where an employer is convicted of a crime against an employee, a payment to the employee or the employee's dependent that is made by the employer's workers' compensation insurance carrier shall not be used to offset the amount of the restitution order unless the court finds that the defendant substantially met the obligation to pay premiums for that insurance coverage.

(g) A defendant's inability to pay shall not be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, "victim" shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) A corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) A person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) A person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) A governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7.

(l) At its discretion, the board of supervisors of a county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that a restitution fine should not be required. Upon revocation of probation, the court shall impose the restitution fine pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or email.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in a case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or another showing to the

court. In determining restitution pursuant to this section, the court shall base its order upon the greater of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, or the value of the victim's labor as guaranteed under California law, or the actual income derived by the defendant from the victim's labor or services or any other appropriate means to provide reparations to the victim.

(r) (1) In addition to any other penalty or fine, the court shall order a person who has been convicted of a violation of Section 350, 653h, 653s, 653u, 653w, or 653aa that involves a recording or audiovisual work to make restitution to an owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. The order of restitution shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised corresponding to the number of nonconforming devices or articles involved in the offense, unless a higher value can be proved in the case of (A) an unreleased audio work, or (B) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. For purposes of this subdivision, possession of nonconforming devices or articles intended for sale constitutes actual economic loss to an owner or lawful producer in the form of displaced legitimate wholesale purchases. The order of restitution shall also include reasonable costs incurred as a result of an investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

(2) As used in this subdivision, "audiovisual work" and "recording" shall have the same meaning as in Section 653w.

Date of Hearing: April 3, 2018
Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2290 (Gallagher) – As Amended April 2, 2018

SUMMARY: Authorizes the court to issue a post-conviction restraining order in domestic violence cases to cover a child witness who is physically present at the time of an act of domestic violence but who is not a victim. Specifically, **this bill**:

1) Requires the court, at the time of sentencing a defendant for a domestic-violence-related offense, to consider issuing an order restraining the defendant from any contact with a child witness who is physically present at the time of an act of domestic violence, but who was not a victim of abuse.

2) States that such a restraining order issued may include an order authorizing a family or juvenile court to make a subsequent order for visitation with the defendant's minor child who is a witness.

3) Requires notice to the protected minor and the prosecutor if the criminal court is considering an exception for visitation. Notice to the minor shall be through the primary legal custodian of that minor, other than the criminal defendant.

4) Provides that a post-conviction criminal protective order shall have precedence in enforcement over a civil court order against the defendant, except as specified.

EXISTING LAW:

1) Authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

2) Allows a court to issue a protective order for up to 10 years to protect the victim of the crime when a defendant is convicted of any of the following crimes:

   a) A crime involving domestic violence, as specified;

   b) Cases of rape, spousal rape, and statutory rape;

   c) Gang cases;

   d) Any offense requiring sex-offender registration (including pimping and pandering of a minor);

e) Stalking cases; and,

f) Elder and dependent adult abuse cases. (Pen. Code, §§ 136.2, subd. (i)(1); 646.9, subd. (k); 368, subd. (l).)

3) Requires a court to consider issuing a protective order restraining the defendant from contact with a percipient witness in all cases in which a criminal defendant has been convicted of a crime involving domestic violence, rape, unlawful sexual intercourse, participation in a criminal street gang, or any crime requiring registration as a sex offender, if it can be established by clear and convincing evidence that the witness has been harassed by the defendant. (Pen. Code, § 136.2, subd. (i)(2).)

4) Provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)

5) Provides that a violation of these protective orders prosecuted as contempt of court is a misdemeanor punishable by imprisonment in the county jail for up to one year, by a fine of up to $1,000, or both. However a second or subsequent violation occurring within seven years and involving an act of violence or a credible threat is punishable by imprisonment in the county jail for up to one year, or by 16 months, or two or three years in prison. (Pen. Code, § 166, subd. (c).)

6) Authorizes, under the Domestic Violence Prevention Act (DVPA), a court to issue and enforce a domestic violence restraining order, including an emergency protective order, a temporary restraining order and a permanent restraining order. (Fam. Code, §§ 6300 *et seq.*)

7) Provides that a permanent order made after hearing under the DVPA may have a duration of no more than five years, subject to termination or modification. An order may be renewed, upon request of either party, for either five years or permanently, without a showing of any further abuse since issuance of the original order. (Fam. Code, § 6345, subd. (a).)

8) Provides that a court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members. (Fam. Code, § 6320.)

9) Allows the court to issue civil harassment protective orders and workplace violence protective orders for up to three years upon a showing of clear and convincing evidence. (Civ. Pro. Code, §§ 527.6 and 527.8.)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Under current law, if a defendant is convicted of a crime involving domestic violence, the court can only issue a post-conviction restraining order restraining the convicted defendant from any contact with the "victim". This does not include witnesses, who are in most cases minors, and who may not have been the actual physical recipient of domestic violence; but were still physically present at the time of the act(s) of domestic violence; witnessed the act(s) of domestic violence; and suffered actual harm as a result of witnessing the act(s) of domestic violence against his or her parent.

   "Currently, a minor who is present during the act(s) of domestic violence can not be included in a post-conviction protective order unless the minor was also physically abused or is likely to be abused, or if there is good cause to believe that the convicted defendant will attempt to punish the child for testifying. However, if the convicted defendant has not physically abused the minor in the past, or if the minor did not testify against the defendant, the minor who witnessed these acts is still in imminent physical danger, and the Court is powerless to issue a post-conviction protective order covering this individual.

   "A minor who is physically present during an act(s) of domestic violence still suffers harm. Numerous studies show that child witnesses of domestic violence typically do worse in school, suffer more frequent health complaints, are more prone to anxiety, depression, and PTSD, are more frequently victims of rape and/or sexual misconduct. These symptoms do not appear immediately, nor in all child witnesses. But they are very real, and militate strongly in favor of changing the law to permit the inclusion of these children in post-conviction protective orders.

   "This bill would include witnesses within the coverage of post-conviction domestic violence restraining orders; and would state that a minor who was not a victim of, but who was physically present at the time of, and act of domestic violence, is a witness and is deemed to have suffered harm."

2) **Protective Orders**: As a general matter, the court can issue a protective order in any criminal proceeding pursuant to Penal Code Section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

   When criminal proceedings have concluded, the court has authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

   Finally, in some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic-violence-related offense, rape, spousal rape, statutory rape, gang cases, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking cases (Pen. Code, §646.9, subd. (k)). Similarly, in cases

involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit … harassing, intimidating, or threatening the victim or the victim's family members or spouse." (Pen. Code, § 1201.3, subd. (a).) Lastly, the court has authority to issue no-contact orders lasting up to 10 years in cases involving the abuse of an elder or dependent adult. (Pen. Code, § 368, subd. (l).)

AB 1850 (Waldron), Chapter 673, Statutes of 2014, defined a minor who is physically present at the time of an act of domestic violence, but is not a victim, as a witness deemed to have suffered harm for the purposes of issuing a protective order in a *pending* criminal case. This bill would extend the protection to child witnesses established by AB 1850 (Waldron) of 2014 to *post-conviction* domestic violence protective orders.

3) **Need for this Bill**: The background provided by the author cites the case of *People v. Delarosarauda* (2014) 227 Cal.App.4th 205, as illustrative of why this bill is needed.

In *Delarosarauda*, *supra*, 227 Cal.App.4th 205, the Court of Appeal held that the trial court did not have authority to issue a post-conviction protective order barring a defendant convicted of corporal injury to a co-habitant from having contact with his son or stepdaughter who were not victims. Delarosarauda was convicted of corporal injury to a co-habitant (Pen. Code, § 273.5, subd. (a)) and other offenses. At sentencing, the trial court issued a criminal protective order as to the victim and her two children for the duration of 10 years. (*Id.* at p. 209.) Appellant challenged the protective order on appeal. Applying the rules of statutory construction, the court concluded that sections 136.2, subdivision (i)(1) did not authorize the trial court to issue the no-contact order as to the children. The plain language of the statute limits it to victims, and the children did not meet the definition of "victim" provided in the protective order statute. (*Id.* at p. 211.) Moreover, there was no evidence that appellant ever attempted to harm the children. (*Id.* at pp. 211-212.) For the same reasons, the court found that the post-conviction protective order was not authorized by the domestic violence statute, Penal Code section 273.5, subdivision (j), which contains similar language. (*Id.* at pp. 212-213.) Accordingly, the Court of Appeal modified the protective order to remove the children. (*Id.* at p. 213.)

It should be noted however, that last year, Penal Code section 136.2 was expanded to authorize the sentencing court to issue post-conviction restraining order to cover percipient witnesses to the qualifying crimes. (See AB 264 (Low), Chapter 270, Statutes of 2017.) Under existing law, the court must consider issuing a protective order restraining for a percipient witness in cases in which the defendant has been convicted of a crime involving domestic violence, rape, unlawful sexual intercourse, participation in a criminal street gang, or any crime requiring registration as a sex offender, if it can be established by clear and convincing evidence that the witness has been harassed by the defendant. (Pen. Code, § 136.2, subd. (i)(2).) Thus, under the proper circumstances, the court can issue a protective order restraining the defendant from a minor who is a witness to an act of domestic violence, but not a victim.

Additionally, existing law authorizes, under the Domestic Violence Prevention Act (DVPA), a court to issue and enforce a domestic violence restraining order, including an emergency protective order, a temporary restraining order and a permanent restraining order. (Fam. Code, §§ 6300 et seq.)

4) **Criminal Contempt**: Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended "to do some further act or achieve some additional consequence." (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order. (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

   Criminal contempt under Penal Code Section 166 is a misdemeanor, unless there are prior violations, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) The criminal contempt power is vested in the prosecution; the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, supra, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt "is entitled to the full panoply of substantive and due process rights." (*People v. Kalnoki* (1992) 7 Cal.App.4th Supp. 8, 11.) Therefore, the defendant has the right to a jury trial, regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

5) **Effects of Restraining Orders:** The consequences of having the court issue a restraining order against a person can be very severe. The person will not be able to go to certain places or to do certain things. For example, the restraining order may prohibit the defendant from being within a certain distance of the person named in the order, thereby implicating the defendant's right to travel. Depending on the facts, such an order may implicate an individual's property interests by forcing him or her to vacate his or her own home.

   The restraining order may affect a person's immigration status. A violation of a protective order is a deportable offense. Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act (INA) states: "Any alien who at any time after entry is enjoined under a protection order issued by a court an whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable."

   The restrained person will generally not be able to own a gun and will have to turn in, sell, or store any guns he or she has, and will not be able to buy a gun while the restraining order is in effect. (Pen. Code, § 29825.)

6) **Argument in Support**: According to the *Conference of California Bar Associations*, the sponsor of this bill, "Under current law, if a defendant is charged with a crime involving domestic violence, the court can issue a pre-conviction restraining order prohibiting the convicted defendant from any contact with the "victim" of the crime, as well as any witnesses and immediate family members of the victim. "Witnesses" are defined to include minors who may not have been victims of domestic violence or abuse but were physically present at the time of the act(s) of domestic violence and are deemed to have suffered harm thereby. However, once the defendant has been convicted of a crime involving domestic violence, much of this protection evaporates. Not only does the pre-conviction protective order expire, but any post-conviction order issued can only extend to the victim or a percipient witness who can prove he or she has been harassed by the defendant.

"The problem is that DV victims, witnesses and their immediate family members often need greater protection post-conviction than pre-conviction. Pre-conviction, many DV defendants have been in custody awaiting trial, and thus have not been free and able to harm the protected individuals. Once convicted, however, most of these defendants are released from custody either immediately or shortly thereafter. At that point, these defendants can be very angry and interested in retaliating against the victim, directly or indirectly, and anyone else the defendant believes is responsible for his or her conviction. This includes children in the household who were not the direct victims of abuse or called as witnesses in court, but whom the Legislature has appropriately recognized as victims of the abuse, through whom the defendant can try to retaliate against the direct victims.

"AB 2290 will remedy this problem by expanding the permissible scope of post-conviction protective orders to the same level as pre-conviction orders, permitting them to protect minors who may not have been victims of domestic violence or abuse themselves, but were physically present at the time of the act(s) of domestic violence. The bill does permits a DV defendant to eventually obtain visitation with a child so protected, but only if the child, the child's parent or guardian, and the office of the prosecuting DA are provided notice and allowed to contest, thus better ensuring the protection of the child."

7) **Argument in Opposition**: According to the *American Civil Liberties Union of California*, "Subdivision (i) of Penal Code section 136.2 allows courts to give additional protections to victims of specific types of crimes where the victim may have particular reason to fear further harm from the offender, and witnesses where there is evidence that the witness has been harassed. For up to ten years, potentially far longer than the sentence or term of probation, the defendant remains subject to the control of the criminal justice system. The terms of these restraining orders in many cases can make it more difficult for the defendant to reintegrate into the community, in some cases making it impossible for an offender to return to his former home or even neighborhood. Expanding the criminal court's power as proposed in AB 2290 would lead to more offenders remaining under more onerous restrictions long after their sentences or terms of probation have ended. The end result in many cases would likely be conviction for violation of the restraining order, and a prolonged cycle of reincarceration.

"Nor is such an expansion necessary to protect children who witness domestic violence. Under existing law, the family court has the power to issue a restraining order that prohibits a party accused of domestic violence from contact with the other, and can extend the order to prohibit contact with other family or household members. (Family Code §§ 6320 and 6340.) Orders restraining an offender from contact while allowing for appropriate visitation may be issued. (Family Code § 6323.) Family courts have the knowledge of each family's situation and the expertise in family matters needed to craft these orders. Asking criminal courts to step in to these situations is asking them to do a job they are not suited for, when there is no reason to do so."

8) **Related Legislation**:

   a) AB 1735 (Cunningham) would require the court to consider issuing a protective order in all cases in which a defendant has been convicted of human trafficking, pimping or pandering AB 1735 is pending in the Assembly Appropriations Committee.

b) AB 2036 (Gipson) would extend a court authority to issue criminal protective orders in juvenile delinquency cases. AB 2036 is pending hearing in this committee.

c) SB 1089 (Jackson) would clarify that all protective orders subject to transmittal to the California Law Enforcement Telecommunications System, also known as CLETS, are required to be so transmitted. SB 1089 is pending hearing in the Senate Public Safety Committee.

9) **Prior Legislation**:

a) AB 270 (Gallagher), of the 2017-2018 legislative session, was substantially similar to this bill. AB 270 was held on the Senate Appropriations suspense file.

b) AB 264 (Low), Chapter 270, Statutes of 2017, requires the court to consider issuing a restraining order for up to 10 years in gang cases and expands the authority to issue all post-conviction restraining order to cover witnesses to the qualifying crimes.

c) AB 1850 (Waldron), Chapter 673, Statutes of 2014, provides that a minor who is physically present at the time of an act of domestic violence but is not a victim, is a witness deemed to have suffered harm for the purposes of issuing a protective order in a pending criminal case.

d) SB 352 (Block), Chapter 279, Statutes of 2015, requires the court to consider issuing a restraining order for up to 10 years when a defendant is convicted for an offense involving abuse of an elder or a dependent adult, regardless of the sentence imposed.

e) AB 307 (Campos), Chapter 291, Statutes of 2013, allows a court to issue a protective order for up to 10 years when a defendant is convicted of specified sex crimes, regardless of the sentence imposed.

f) SB 723 (Pavley), Chapter 155, Statutes of 2011, allows a court to issue a protective order for up to 10 years when a defendant is convicted for an offense involving domestic violence, regardless of the sentence imposed.

g) SB 834 (Florez), Chapter 627, Statutes of 2010, allows a court to issue a protective order for up to 10 years in sex cases involving a minor victim.

h) AB 289 (Spitzer), Chapter 582, Statutes of 2007, allows a court to issue a protective order for 10 years upon a defendant's conviction for stalking.

REGISTERED SUPPORT / OPPOSITION:

Support

Conference of California Bar Associations (Sponsor)
Crime Victims United of California
Riverside Sheriffs' Association

Opposition

American Civil Liberties Union of California

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

Date of Hearing: April 3, 2018
Counsel: Matthew Fleming

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 2356 (Kiley) – As Introduced February 13, 2018

SUMMARY: Adds the crime of human sex trafficking to the list of "violent felonies" making that offense a "strike" for purposes of the Three Strikes law and requiring a defendant who was convicted of such an offense to serve a minimum of 85% of his or her sentence in custody. Specifically, **this bill**:

1) Provides that it is a "violent felony" to deprive or violate the personal liberty of another with the intent to effect or maintain the offenses of:

   a) Procurement of a person under the age of 18;

   b) Pimping;

   c) Pandering;

   d) Procurement of a child under the age of 16;

   e) Abduction of a minor for prostitution;

   f) Sale or distribution of obscene matter depicting person under age of 18 years engaging in sexual conduct;

   g) Production, distribution, or exhibition of obscene matter;

   h) Sexual exploitation of a child;

   i) Employment of minor in sale or distribution of obscene matter or production of pornography;

   j) Advertising or promotion of matter represented to be obscene;

   k) Obscene live conduct; or

   l) Extortion.

2) Makes human sex trafficking a strike for purposes of the Three Strikes law.

EXISTING LAW:

1) Defines a "violent felony" as any of the following (Pen. Code § 667.5(c).):

   a) Murder or voluntary manslaughter;

   b) Mayhem;

   c) Rape or spousal rape accomplished by means of force or threats of retaliation;

   d) Sodomy by force or fear of immediate bodily injury on the victim or another person;

   e) Oral copulation by force or fear of immediate bodily injury on the victim or another person;

   f) Lewd acts on a child under the age of 14 years, as defined;

   g) Any felony punishable by death or imprisonment in the state prison for life;

   h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;

   i) Any robbery;

   j) Arson of a structure, forest land, or property that causes great bodily injury;

   k) Arson that causes an inhabited structure or property to burn;

   l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;

   m) Attempted murder;

   n) Explosion or attempted explosion of a destructive device with the intent to commit murder;

   o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;

   p) Explosion of a destructive device which causes death or great bodily injury;

   q) Kidnapping;

   r) Assault with intent to commit mayhem, rape, sodomy or oral copulation;

   s) Continuous sexual abuse of a child;

   t) Carjacking, as defined;

u) Rape or penetration of genital or anal openings by a foreign object;

v) Felony extortion;

w) Threats to victims or witnesses, as specified;

x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;

y) Use of a firearm during the commission of specified crimes; and,

z) Possession, development, production, and transfers of weapons of mass destruction. (Pen. Code § 667.5(c).)

2) Allows a three year sentence enhancement when a person who has committed a violent felony and already has been sentenced to a prison term for a violent felony in the past. (Pen. Code § 667.5(a).)

3) Limits the accrual of post commitment credits for a person convicted of a violent felony to 15 percent. (Pen. Code § 2933.1(a).)

4) Defines a "serious felony" as any of the following: murder or manslaughter; mayhem; rape; sodomy; oral copulation; lewd acts on a child under the age of 14; any felony punishable by death or imprisonment for life; any felony in which the defendant inflicts great bodily injury; attempted murder; assault with the intent to commit rape or robbery; assault with a deadly weapon or instrument on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive devise with the intention to commit murder or great bodily injury; first-degree burglary; armed robbery or bank robbery; kidnapping; holding of a hostage by a person confined to a state prison; attempting to commit a felony punishable by death or life in prison; any felony where the defendant personally used a dangerous or deadly weapon; selling or otherwise providing heroin, PCP or any type of methamphetamine-related drug; forcible sexual penetration; grand theft involving a firearm; carjacking; assault with the intent to commit mayhem, rape, sodomy or forcible oral copulation; throwing acid or other flammable substance; assault with a deadly weapon on a peace officer; assault with a deadly weapon on a member of the transit authority; discharge of a firearm in an inhabited dwelling or car; rape or sexual penetration done in concert; continuous sexual abuse of a child; shooting from a vehicle; intimidating a victim or witness; any attempt to commit the above-listed crimes except assault or burglary; and using a firearm in the commission of a crime and possession of weapons of mass destruction. (Pen. Code § 1192.7(c).)

5) Provides that if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious and/or violent felony convictions in the past, the court shall adhere to each of the following:

a) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction;

b) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense;

c) The length of time between the prior serious and/or violent felony conviction and the current felony conviction shall not affect the imposition of sentence;

d) There shall not be a commitment to any other facility other than the state prison, diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center;

e) The total amount of credits awarded shall not exceed one–fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison;

f) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision;

g) If there is a current conviction for more than one serious or violent felony, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law; and

h) Any sentence imposed pursuant to law will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law. (Pen. Code § 667(c).)

6) Provides that when a defendant has one prior serious and/or violent felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction. (Pen. Code § 667 subd. (e)(1).)

7) Provides that if a defendant has two or more prior serious and/or violent felony convictions, as defined by law, that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

a) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious and/or violent felony convictions;

b) Imprisonment in the state prison for 25 years; or

c) The term determined by the court pursuant to law for the underlying conviction, including any applicable enhancement, as defined. (Pen. Code § 667 subd. (e)(2).)

FISCAL EFFECT: Unknown

COMMENTS:

1) **Author's Statement**: According to the author, "Human trafficking ranks among one of the fastest growing illegal crimes in the world and despite the seriousness of human trafficking, these crimes are not considered serious or violent felonies under California law. This bill would identify the most egregious forms of human trafficking and add them to the list of crimes that are considered to be a violent felony."

2) **"Violent Felony" Designation**: This bill would add human sex trafficking to the list of "violent" crimes that causes an offender to receive fewer custody credits toward release on parole and can be used as a "strike" in order to double an offender's sentence upon a subsequent conviction for a felony. Persons convicted of felony offenses that are defined in statute as "violent felonies" must serve 85% of their sentence in custody, whereas persons convicted of a felony that is not specifically defined as "violent" typically are able to serve less than 85%.

   Under California law, a sentence can be increased where a person has a prior conviction that resulted in a prison term and the new offense is one of the listed violent felonies. In addition to the time that the person must serve for his new offense, a three year term can be added. This sentencing enhancement is separate from the three strikes law.

3) **Three Strikes Implications**: The Three Strikes law was enacted by AB 971 (Jones/Costa), Chapter 12, Statutes of 1994, and by Proposition 184 passed by the voters on November 8, 1994. The Three Strikes law provides that a juvenile adjudication (finding by a juvenile court judge that a minor committed a crime) may constitute an adult strike prior, although a minor is not entitled to a jury trial. In addition, a person sentenced under the Three Strikes law may not be committed to any facility other than prison and the Three Strikes law prohibits plea-bargaining. The Three Strikes law eliminates any "wash-out" period, requiring that any prior or serious or violent felony conviction be used to enhance a sentence regardless of when it occurred; and requires the prosecuting attorney to plead and prove each prior felony conviction. Finally, the Three Strikes law may only be amended by a two-thirds vote of the Legislature or a ballot measure approved by the electorate.

   As indicated above, offenses that are defined as violent felonies are considered "strikes" for purposes of California's Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012 specifies that only the crimes that were included in the "violent felonies" list prior to November 7, 2016 shall be treated as strikes for purposes of the Three Strikes law. Although human sex trafficking is not considered a strike under current law, this bill would ensure that it is.

4) **Proposition 57**: On November 8, 2016 the voters of California approved Proposition 57. Proposition 57 was known as the "Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative." The initiative allows parole consideration for non-violent felons. It also authorizes sentence reduction for rehabilitation, good behavior, and education. Additionally the proposition provides juvenile court judges decide whether a juvenile will be tried as an adult.

   As a result of the initiative state prison inmates convicted of non-violent felony offenses are considered for early release. The state prison system may award additional sentencing credits

to inmates for good behavior and approved rehabilitative or educational achievements. Additionally, minors must have a hearing in juvenile court before they can be transferred to adult court.

Advocates for this legislation want human sex trafficking offenses to be included on the violent felonies list codified in the penal code. That would make any person convicted of such an offense ineligible for early parole. It would also increase the penalties for human sex trafficking. In addition, as noted by the opposition, this bill may counteract the express will of the people of California when they passed Proposition 57. (*See infra.*)

5) **Prison Over-Crowding**: In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare. (*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that "without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill" inmates in California's prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

CDCR's February 2018 monthly report on the prison population notes that the in-state adult institution population is currently 113,975 inmates, which amounts to approximately 134% of design capacity. This represents a marginal .1% improvement from February of last year. Additionally, there are still 4,145 prisoners being housed out of state. (<http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/TPOP1A/TPOP1Ad1802.pdf>.)

Thus, while CDCR is currently in compliance with the three-judge panel's order on the prison population, the state needs to maintain a "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) This bill would greatly increase the sentences imposed upon people with human trafficking convictions and therefore is likely to result in a larger prison population. It would also not allow them to be eligible for early parole. As a result it may be at odds with the requirement that the state continue to keep its prison population below the 137.5% threshold.

6) **Argument in Support**: According to the sponsor of the bill, *The Office of the District Attorney for El Dorado County*, "Despite the egregiousness of these human trafficking cases, these crimes are not considered to be violent felonies under current law. Consequently, this is allowing many of these violent perpetrators to be released from prison with only serving half of their sentence. Additionally, those convicted are eligible to be released after only serving a sentence for one victim, regardless of how many victims they were convicted of trafficking. Further, all of the enhancements for subsequent crimes under the current strike laws are not applicable to these crimes."

7) **Argument in Opposition**: According to *The American Civil Liberties Union*, "AB 2356 directly contradicts the will of the voters when they passed Proposition 57 in November of 2016. Prop 57 allows an offender convicted of a non-violent felony to be eligible for parole when he or she has completed the prison term for his or her primary offense. The arguments in opposition to Prop 57 expressly noted that someone convicted of human trafficking would be eligible for early parole under the Proposition. Proponents of the measure noted that California's prison population had increased by 500% in just a few decades, and that the measure would save tens of millions of taxpayer dollars. California voters passed the measure with over 65% of the vote. AB 2356, like other measures introduced this session to add crimes to the list of violent felonies would undermine the voters' choice. The bill would limit the cost-saving and rehabilitative benefits of Prop 57 by adding to the list of violent felonies, this allowing fewer offenders to be eligible for early release. If it were to pass, we surely would see more crimes proposed to be added, year after year."

8) **Related Legislation**: AB 2823 (Nazarian) seeks to add human trafficking, among other offenses, to the list of violent felonies.

9) **Prior Legislation**:

   a) AB 67 (Rodriguez), of the 2017-2018 Legislative Session, would have added human trafficking and specified sexual assault offenses to the list of violent felonies in the Penal Code. AB 67 was held in the Assembly Appropriations suspense file.

   b) AB 27 (Melendez), of the 2017-2018 Legislative Session, would have added a number of sexual offenses to the list of violent felonies in the Penal Code. AB 27 was held in the Senate Appropriations suspense file.

   c) SB 1269 (Galgiani) of the 2015-2016 Legislative Session, would have added human trafficking to the list violent felonies in the Penal Code. SB 1269 failed passage in the Senate Public Safety Committee.

   d) AB 1188 (Pan) of the 2011-2012 Legislative Session, would have added four new offenses relating to child abuse to the list of violent" felonies, and added five new offenses related to human trafficking and the abuse of a child to the "serious" felony list. AB 1188 failed passage in the Assembly Public Safety Committee.

   e) AB 16 (Swanson), of the 2009-2010 Legislative Session, would have added human trafficking to the list of serious and violent felonies codified in the penal code. AB 16 was held in the Assembly Appropriations suspense file.

REGISTERED SUPPORT / OPPOSITION:

Support

El Dorado District Attorney (Sponsor)
3Strands Global Foundation
California District Attorneys Association

California Police Chiefs Association
El Dorado Delegation of Youth and Government
Love Never Fails
Riverside Sheriffs' Association
Stand Up Placer

Opposition

American Civil Liberties Union

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